

02:00:00

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

2

UNITED STATES OF AMERICA, : CASE NO. 1:18-cr-0043
: :
4 Plaintiff, :
vs. : JURY TRIAL
5 : :
6 YANJUN XU, also known as XU : 27th of OCTOBER, 2021
7 YANJUN, also known as QU HUI, : 9:30 A.M.
also known as ZHANG HUI, : :
7 : VOLUME 8
Defendant. : :
8 : :
9

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE TIMOTHY S. BLACK, JUDGE
UNITED STATES DISTRICT JUDGE

10

- - -

11

APPEARANCES:

For the Plaintiff:

12

Timothy S. Mangan, Esq.
Emily N. Glatfelter, Esq.
Assistant United States Attorneys
221 East Fourth Street, Suite 400
Cincinnati, Ohio 45202
and
Matthew John McKenzie, Esq.
United States Department of Justice
National Security Division
950 Pennsylvania Avenue NW
Washington, D.C. 20530
and
Jacqueline K. Prim
Special Assistant, Paralegal
United States Department of Justice
National Security Division
950 Pennsylvania Avenue NW
Washington, D.C. 20530

13

For the Defendant:

14

Ralph William Kohnen, Esq.
Jeanne Marie Cors, Esq.
Sanna-Rae Taylor, Esq.
Taft Stettinius and Hollister
425 East Walnut Street, Suite 1800
Cincinnati, Ohio 45202
and

15

16

17

18

19

20

21

22

23

24

25

Robert K. McBride, Esq.
Amanda Johnson, Esq.
Taft Stettinius and Hollister
50 East RiverCenter Boulevard
Suite 850
Covington, Kentucky 41011
and
Florian Miedel, Esq.
Miedel & Mysliwiec, LLP
80 Broad Street, Suite 1900
New York, New York 10004

For Arthur Gau:

Milagros A. Cisneros, Esq.
Federal Public Defender
District of Arizona
850 W. Adams Street, Suite 201
Phoenix, AZ 85007-2730

Also present: Mae Harmon, Interpreter
Robin Murphy, Interpreter
Yanjun Xu, Defendant

Law Clerk: Cristina V. Frankian, Esq.

Courtroom Deputy: Rebecca Santoro

Stenographer: Mary Schweinhagen, RPR, RMR, RDR, CRR
United States District Court
200 West Second Street, Room 910
Dayton, Ohio 45402

Proceedings reported by mechanical stenography,
transcript produced by computer.

* * * * *

INDEX OF WITNESSES

WEDNESDAY, OCTOBER 27, 2021

DIRECT CROSS REDIRECT RECROSS

PLAINTIFF'S WITNESSES

ADAM JAMES	6	32	48	50
ARTHUR GAU	53	113	151	160

* * * *

INDEX OF EXHIBITS

GOVERNMENT'S ADMITTED

13	80	63
	82	97
14	83	59
	84	60
15	85	94
	87a	81
16	87b	89
	88a	74
17	88b	74
	89	107

* * * *

1 P-R-O-C-E-E-D-I-N-G-S 9:38 A.M.

09:38:11 2 (In open court outside the presence of the jury.)

09:38:11 3 THE COURT: Good morning. We're here in the open
09:38:14 4 courtroom, 9:38. I'm sorry to keep you waiting.

09:38:18 5 The government filed a motion last night in response to
09:38:22 6 the Court's communication regarding what we talked about at
09:38:27 7 the break. I'd like to address that later if that's
09:38:31 8 acceptable so we don't keep the jury waiting. Is that
09:38:34 9 acceptable to the government?

09:38:38 10 MR. MANGAN: It is, Your Honor. I don't think it
09:38:41 11 would come up this morning. If we could have some clarity by
09:38:44 12 the lunch break, that would help.

09:38:46 13 THE COURT: Very well. The defense acquiesce with
09:38:49 14 that as well?

09:38:52 15 MR. MIEDEL: Yes, Your Honor. I have one or two
09:38:55 16 items to raise concerning the testimony of Arthur Gau, who is
09:38:58 17 going to testify later this morning. We can take it up before
09:39:00 18 he testifies rather than now, but I just wanted to flag it.

09:39:02 19 THE COURT: Thank you for flagging it.

09:39:05 20 And is the defense ready for the jury?

09:39:07 21 MS. CORS: Yes, Your Honor.

09:39:08 22 THE COURT: And the government as well?

09:39:10 23 MR. MCKENZIE: I am, Your Honor. I just wanted to
09:39:11 24 point out that we have a new interpreter that would likely
09:39:14 25 need to be sworn in. I didn't know if you wanted to do that

09:39:18 1 before the jury or not.

09:39:19 2 THE COURT: Thank you for bringing that to my

09:39:21 3 attention.

09:39:22 4 Good morning, Madam Interpreter. Would you stand and

09:39:25 5 take the oath to accurately translate the proceeding.

09:39:27 6 Do you solemnly swear or affirm that you will accurately

09:39:31 7 translate the proceedings?

09:39:34 8 THE INTERPRETER: Yes.

09:39:35 9 THE COURT: Thank you. You may be seated. Thank

09:39:41 10 you for being here.

09:39:44 11 THE INTERPRETER: Thank you.

09:39:50 12 THE COURT: Let's call for the jury.

09:41:30 13 THE COURTROOM DEPUTY: All rise for the jury.

09:41:32 14 (Jury in at 9:41 a.m.)

09:42:05 15 THE COURT: You may all be seated. Thank you. The

09:42:08 16 15 jurors have arrived. Good morning and welcome back. I

09:42:12 17 told you this a couple of times; I want you to believe it

09:42:15 18 deep, deep inside. The Court and the community and the

09:42:18 19 participants appreciate your work.

09:42:22 20 We're going to continue with the testimony of this

09:42:26 21 gentleman. He's still under oath.

09:42:28 22 The government may proceed.

09:42:31 23 **ADAM ROBERT JAMES, PLAINTIFF WITNESS, PREVIOUSLY SWORN**

09:42:31 24 MR. MCKENZIE: Thank you, Your Honor. For the

09:42:36 25 record, this is Matthew McKenzie for the government.

JAMES - DIRECT (McKenzie)

6

09:42:39 1 THE COURT: Very well. Can you orient those
09:42:45 2 microphones, please.

09:42:46 3 MR. MCKENZIE: Is this better, Your Honor?

09:42:48 4 THE COURT: A little bit.

09:42:52 5 MR. MCKENZIE: I will try to keep my voice up.

09:42:54 6 THE COURT: That's perfect.

09:42:56 7 **DIRECT EXAMINATION (CONT.)**

09:42:56 8 BY MR. MCKENZIE:

09:42:56 9 Q. Speaking of reorienting, Special Agent James, I'd like to
09:43:00 10 direct your attention to the forensic analysis that you
09:43:03 11 conducted of the hard drive that we discussed yesterday.

09:43:11 12 You mentioned a type of malware that you found called
09:43:18 13 Sakula. Remind the jury what type of malware Sakula is.

09:43:27 14 A. Sakula is a remote access trojan that beacons to the
09:43:30 15 Internet.

09:43:32 16 Q. Do remote access trojans, are they a type of trojan
09:43:36 17 horse?

09:43:37 18 A. They are.

09:43:43 19 Q. And please remind us, on what date was the Sakula malware
09:43:48 20 installed on the hard drive you analyzed?

09:43:52 21 A. January 25th of 2014.

09:43:58 22 MR. MCKENZIE: Your Honor, I ask that we publish
09:44:00 23 Government's Exhibit 110 on page 1 -- on page 3.

09:44:06 24 THE COURT: It's been admitted?

09:44:08 25 MR. MCKENZIE: Which has been admitted, yes.

JAMES - DIRECT (McKenzie)

7

09:44:10 1 THE COURT: Yes, you may publish it.

09:44:12 2 And if the special agent would keep his voice up, please.

09:44:17 3 THE WITNESS: Yes, sir.

09:44:18 4 MR. MCKENZIE: I apologize. Page 4. My mistake.

09:44:24 5 BY MR. MCKENZIE:

09:44:25 6 Q. Just to again get us reoriented, directing your attention

09:44:30 7 to the first message sent on January 25, 2014, will you please

09:44:35 8 read that message?

09:44:37 9 A. "The horse is planted. This morning."

09:44:40 10 Q. Who sent that message.

09:44:42 11 A. Tian Xi.

09:44:46 12 MR. MCKENZIE: To refresh our recollection on who

09:44:49 13 Tian Xi is, may I please publish Government's Exhibit 111,

09:44:54 14 page 6, which is in evidence?

09:45:06 15 THE COURT: Yes.

09:45:06 16 BY MR. MCKENZIE:

09:45:06 17 Q. Directing your attention to the top right column, do you

09:45:09 18 see the name Tian Xi?

09:45:12 19 A. I do.

09:45:12 20 Q. Directing your attention to the first sentence of the

09:45:16 21 first full paragraph, does it identify Tian Xi as a

09:45:24 22 manufacturing engineer?

09:45:25 23 A. It does.

09:45:28 24 MR. MCKENZIE: Okay. I would like to return one

09:45:33 25 more time to Government's Exhibit 110, page 4?

JAMES - DIRECT (McKenzie)

8

09:45:37 1 THE COURT: Yes.

09:45:45 2 BY MR. MCKENZIE:

09:45:45 3 Q. Directing your attention to the first message of January

09:45:48 4 25, 2014, to whom did Tian send that message?

09:45:52 5 A. Xu Yanjun.

09:46:02 6 Q. Okay. I think we are now back to where we were

09:46:04 7 yesterday.

09:46:04 8 I'd like to return to your forensic analysis. Yesterday

09:46:10 9 you discussed the Sakula malware, but you also mentioned a

09:46:14 10 second type of malware that you discovered. Will you remind

09:46:17 11 us what that program is called?

09:46:19 12 A. That program is called plugX.

09:46:22 13 Q. How many types of variants of plugX did you find on

09:46:28 14 the -- on the hard drive?

09:46:28 15 A. There were two different versions of plugX on the hard

09:46:33 16 drive.

09:46:33 17 Q. Will you explain to the jury what it means to have

09:46:37 18 multiple versions of plugX?

09:46:43 19 A. What it means to have multiple versions of plugX is

09:46:46 20 there are actually two sets of files related to the plugX

09:46:50 21 malware that were independent of each other.

09:46:54 22 Q. Did you analyze both sets of files?

09:46:56 23 A. I did.

09:46:57 24 Q. Did both of them work?

09:46:58 25 A. No, they did not both work.

JAMES - DIRECT (McKenzie)

9

09:47:01 1 **Q.** Tell the jury what you mean by that.

09:47:03 2 **A.** So the plugX malware is composed of several different

09:47:10 3 files that it needs to have in order to operate correctly.

09:47:14 4 One of the variants of plugX, one of the files appeared to

09:47:19 5 be corrupted, and so it did not run properly when you

09:47:23 6 attempted to run it. Or when I attempted to run it.

09:47:27 7 **Q.** And what about the other variant of plugX? Did that

09:47:31 8 work?

09:47:32 9 **A.** The other variant did work properly.

09:47:34 10 **Q.** What type of malware is plugX?

09:47:37 11 **A.** PlugX is a remote access trojan.

09:47:41 12 **Q.** And what happened when you ran the variant of plugX that

09:47:44 13 worked?

09:47:45 14 **A.** The variant that successfully ran would issue a beacon

09:47:50 15 to a domain on the Internet.

09:47:52 16 **Q.** Were you able to determine what that domain was?

09:47:55 17 **A.** I was.

09:47:55 18 **Q.** And what was that domain?

09:47:58 19 **A.** The domain for the variant of plugX that worked was

09:48:04 20 ns24.dnsdojo.com.

09:48:12 21 **Q.** Do you sometimes refer to that as dnsdojo.com?

09:48:17 22 **A.** I do.

09:48:19 23 **Q.** What does it mean in plain English that the program

09:48:24 24 beaconed to this dnsdojo.com?

09:48:27 25 **A.** The beacon to dnsdojo.com was a way for the malware to

JAMES - DIRECT (McKenzie)

10

09:48:33 1 check in with the computer intruders that intended to
09:48:37 2 control it.

09:48:38 3 **Q.** Based on your analysis of the hard drive, did the plugX
09:48:44 4 program actually beacon out to dnsdojo.com?

09:48:49 5 **A.** From my analysis of the hard drive, I could not
09:48:51 6 determine that.

09:48:51 7 **Q.** Were you able to determine that it was designed to do so?

09:48:55 8 **A.** Yes.

09:48:56 9 **Q.** Are you familiar with the term "Crowd Strike"?

09:49:02 10 **A.** I am.

09:49:03 11 **Q.** What is Crowd Strike?

09:49:05 12 **A.** Crowd Strike is a US information security and incident
09:49:09 13 response company.

09:49:10 14 **Q.** Does Crowd Strike publish publicly available blog posts
09:49:17 15 about hacking activities?

09:49:18 16 **A.** They do.

09:49:18 17 **Q.** Directing your attention to on or about February 25,
09:49:24 18 2014, did there come a time that you became aware of a blog
09:49:28 19 post on Crowd Strike?

09:49:34 20 MS. CORS: Your Honor, objection.

09:49:35 21 THE COURT: Basis?

09:49:37 22 MS. CORS: Hearsay.

09:49:40 23 MR. MCKENZIE: I haven't gotten into the substance
09:49:42 24 of anything yet.

09:49:42 25 THE COURT: We are not there yet. Overruled.

JAMES - DIRECT (McKenzie)

11

09:49:45 1 BY MR. MCKENZIE:

09:49:45 2 Q. Did you become aware of a blog post on Crowd Strike?

09:49:48 3 A. I was aware that there was a blog post.

09:49:52 4 Q. Without getting into the details, what was the general

09:49:55 5 topic of the post?

09:49:56 6 A. The general topic of the post was computer intrusion

09:50:00 7 activity targeting French aerospace.

09:50:04 8 Q. Was that post published on the Internet?

09:50:07 9 A. It was.

09:50:07 10 Q. I'd like to direct your attention back to Government's

09:50:12 11 Exhibit 110, page 4. And I'd like to begin with the messages

09:50:28 12 on February 25, 2014. Will you please read just the first

09:50:34 13 message?

09:50:35 14 A. "Call me back as soon as possible."

09:50:40 15 Q. Who sent that message?

09:50:41 16 A. Xu Yanjun.

09:50:45 17 Q. To whom did he send it?

09:50:47 18 A. Chai Meng.

09:50:50 19 Q. On what date was this message sent?

09:50:52 20 A. February 25th of 2014.

09:50:56 21 Q. On what date did Crowd Strike publish the blog post about

09:51:01 22 hacking activities targeting French aerospace?

09:51:05 23 A. February 25th of 2014.

09:51:08 24 Q. I'd like to read the remaining messages on the page. I

09:51:13 25 will read the messages sent by Chai Meng.

JAMES - DIRECT (McKenzie)

12

09:51:20 1 So please read the next message.

09:51:23 2 A. "What does Chen mean?"

09:51:24 3 Q. "Chen is still reporting, and I'm waiting for him to come

09:51:27 4 out."

09:51:28 5 A. "Ah. How will Chen Li react to this matter? The mail

09:51:34 6 has been forwarded to your email address."

09:51:39 7 MR. MCKENZIE: Could we please go to page 5?

09:51:42 8 THE COURT: Yes.

09:51:46 9 BY MR. MCKENZIE:

09:51:46 10 Q. Let us continue with the next two messages.

09:51:52 11 "Okay."

09:51:53 12 A. "The part with the red marking in the attachment, is

09:51:56 13 that being flagged by Suzhou's investigation?"

09:52:05 14 Q. Who sent that last message?

09:52:08 15 A. Xu Yanjun.

09:52:10 16 Q. To whom did he send it?

09:52:12 17 A. Chai Meng.

09:52:13 18 Q. Where is Safran Suzhou located?

09:52:20 19 A. In Suzhou.

09:52:22 20 Q. And who is the parent company of Safran Suzhou?

09:52:27 21 A. Safran Group.

09:52:31 22 Q. What company owns the computer that you analyzed?

09:52:35 23 A. Safran.

09:52:37 24 Q. In what company -- in what country is Safran located?

09:52:40 25 A. They are located in France.

JAMES - DIRECT (McKenzie)

13

09:52:44 1 Q. Will you please read the next message.

09:52:48 2 A. "Your QQ."

09:52:50 3 Q. Do you know what "QQ" stands for or what "QQ" is?

09:52:54 4 A. I do.

09:52:55 5 Q. What is QQ?

09:52:56 6 A. QQ is -- the most common thing it's used for is a

09:53:02 7 mobile messaging app.

09:53:05 8 Q. Is it popular in China?

09:53:07 9 A. It is.

09:53:08 10 Q. We will go through these messages. I will read Song

09:53:16 11 Sicheng. He responded with a series of numbers.

09:53:21 12 Please read the next message.

09:53:23 13 A. "Received. Sent already."

09:53:27 14 Q. "Okay. I am receiving it."

09:53:31 15 Directing your attention to the next set of messages,

09:53:35 16 will you please read the -- just the next message?

09:53:39 17 A. "What does Chen mean by heaping the responsibility upon

09:53:43 18 me and furthermore having the guest to find Gu?"

09:53:50 19 Q. Who sent that message?

09:53:51 20 A. Xu Yanjun.

09:53:53 21 Q. To whom did he send it?

09:53:56 22 A. Chai Meng.

09:53:56 23 Q. All right. We will read the next exchange. I will read

09:53:59 24 the parts of Chai Meng. Please read the next message.

09:54:02 25 A. "Isn't it like putting a noose on his own neck?"

JAMES - DIRECT (McKenzie)

14

09:54:06 1 **Q.** "I don't know. I told him the French device was seized.

09:54:09 2 He immediately stated that he had foresight. As to matter of

09:54:16 3 finding Gu, he never told me about it."

09:54:20 4 Let's pause there for a moment.

09:54:27 5 What country did the hard drive you analyzed come from?

09:54:30 6 **A.** It came from France.

09:54:36 7 **Q.** I'd like to take a pause from Government's Exhibit 110

09:54:39 8 and turn to Government's Exhibit 111, page 1.

09:54:49 9 Directing your attention to the top of the screen next to

09:54:53 10 "Name," will you please read the name?

09:54:56 11 **A.** Gu Gen.

09:55:00 12 **Q.** Scrolling down to the middle of the page where it says

09:55:04 13 "Position," will you please read the position?

09:55:06 14 **A.** "Senior IT infrastructure manager and information

09:55:11 15 security officer."

09:55:12 16 **Q.** Scrolling to the bottom of the screen underneath the red

09:55:17 17 seal, will you please read the company?

09:55:18 18 **A.** "Safran Beijing Enterprise Management Company, Ltd.,

09:55:24 19 Suzhou Branch.

09:55:26 20 **Q.** Thank you.

09:55:26 21 MR. MCKENZIE: I'd like to return to Government's

09:55:28 22 Exhibit 110, which is in evidence. I believe we were on page

09:55:33 23 5.

09:55:34 24 THE COURT: Very well.

09:55:40 25 BY MR. MCKENZIE:

JAMES - DIRECT (McKenzie)

15

09:55:40 1 **Q.** Directing your attention to the message sent at 3:10 p.m.

09:55:47 2 We'll continue reading with you reading the part of Xu Yanjun

09:55:52 3 and I'll read Chai Meng.

09:55:54 4 **A.** "I wanted to call him a son of a bitch. He stated the

09:55:57 5 entire thing led to an exposing is because what the guest

09:56:01 6 has planted in the French device."

09:56:04 7 **Q.** In the term or in the context of a cyber intrusion case,

09:56:08 8 what does "planted" mean?

09:56:10 9 **A.** To install.

09:56:12 10 **Q.** All right. The next message was sent at 3:12 p.m.

09:56:16 11 "It's my guess to prove his brilliance."

09:56:20 12 **A.** "It feels bitterly disappointing to have leaders like

09:56:24 13 that."

09:56:25 14 "Can you suggest not letting the guest go to find Gu?

09:56:34 15 First, the guest is not exposed; two, Gu doesn't have the

09:56:37 16 power to decide. Thirdly, Gu would report the situation to

09:56:40 17 me at any time."

09:56:43 18 **Q.** We will continue on to the first message from February

09:56:49 19 26, 2014. Will you please read the first message?

09:56:54 20 **A.** "France is letting Little Gu to check out this record,

09:57:00 21 ns24.dnsdojo.com. Does it have anything to do with you

09:57:07 22 all?"

09:57:08 23 **Q.** Who sent that message?

09:57:09 24 **A.** Xu Yanjun.

09:57:10 25 **Q.** To whom did he send it?

JAMES - DIRECT (McKenzie)

16

09:57:12 1 **A.** Chai Meng.

09:57:13 2 **Q.** In what country is Safran located?

09:57:16 3 **A.** They are located in France.

09:57:18 4 **Q.** Who did Gu Gen work for?

09:57:21 5 **A.** Safran Suzhou.

09:57:23 6 **Q.** To what domain did the plugX malware you found on the

09:57:27 7 hard drive beacon?

09:57:28 8 **A.** Ns24.dnsdojo.com.

09:57:38 9 **Q.** At 3:08 Chai Meng responded, "Let me ask."

09:57:43 10 Directing your attention to the next message sent on

09:57:48 11 February 27, 2014, will you please read that message?

09:57:53 12 **A.** "France is asking Little Gu to inspect this record,

09:58:02 13 ns24.dnsdojo.com. Is it related to you?"

09:58:05 14 **Q.** To what domain did the plugX malware beacon?

09:58:14 15 **A.** Ns24.dns.dojod.com.

09:58:26 16 **Q.** Directing your attention back to Government's Exhibit

09:58:30 17 111, page 1.

09:58:32 18 MR. MCKENZIE: And if I may publish to the jury,

09:58:35 19 Your Honor.

09:58:35 20 THE COURT: Yes. It's been admitted, right?

09:58:37 21 MR. MCKENZIE: Yes, Your Honor.

09:58:39 22 BY MR. MCKENZIE:

09:58:41 23 **Q.** Scrolling down to "Position." Will you read Gu Gen's

09:58:46 24 position?

09:58:46 25 **A.** The senior IT infrastructure manager and information

JAMES - DIRECT (McKenzie)

17

09:58:50 1 security officer.

09:58:52 2 Q. Based on your years of experience in information

09:58:55 3 technology and security and work in cyber intrusion

09:58:59 4 investigations, what is the role of senior IT and security

09:59:04 5 officers in investigating cyber intrusions for a company?

09:59:11 6 A. Generally, your information security office would be

09:59:14 7 the office that conducts computer or -- well, intrusion,

09:59:33 8 computer intrusion investigations into the company.

09:59:26 9 Q. I'd like to direct your attention back to Government's

09:59:29 10 Exhibit 110, page 5, which is in evidence.

09:59:35 11 I'd like to move on now to the message sent on -- the

09:59:41 12 messages sent on March 11, 2014. Will you please read the

09:59:48 13 first message?

09:59:49 14 A. "When did Gu ask you? When did France ask you?"

09:59:55 15 Q. Who sent that message?

09:59:56 16 A. Xu Yanjun.

09:59:57 17 Q. To whom did he send it?

09:59:59 18 A. Tian Xi.

10:00:01 19 Q. I will read the messages sent by Tian Xi.

10:00:05 20 "Gu received an email from the French side, asked me

10:00:11 21 yesterday."

10:00:11 22 A. "Have you seen the email?"

10:00:12 23 Q. "No."

10:00:17 24 What country is Safran located in or headquartered in?

10:00:20 25 A. They are headquartered in France.

JAMES - DIRECT (McKenzie)

18

10:00:22 1 Q. Could we please see the next page.

10:00:33 2 For March 17th, will you please read the messages sent by

10:00:37 3 Xu Yanjun, and I will read the messages sent by Tian Xi?

10:00:43 4 A. "Anything new? I sought out Little Gu last week and

10:00:49 5 current France has not finding suspicious documents in the

10:00:51 6 record."

10:00:58 7 Q. "Nothing."

10:00:59 8 A. "Should there be something new be prompt notifying me

10:01:01 9 and I will communicate with Little Gu."

10:01:03 10 Q. "Understand."

10:01:04 11 Directing your attention now to April 17, 2014, messages,

10:01:10 12 let's read the first three messages, you reading those sent by

10:01:15 13 the defendant, I'll read those sent by Tian Xi.

10:01:18 14 A. "Of the matter, any new situation?"

10:01:21 15 Q. "No."

10:01:23 16 A. "Good."

10:01:28 17 Q. Directing your attention to the next message that was

10:01:31 18 sent, will you please read the message?

10:01:33 19 A. "Any updates on that incident?"

10:01:37 20 Q. Who sent the message?

10:01:38 21 A. Xu Yanjun.

10:01:40 22 Q. To whom did he send it?

10:01:41 23 A. Gu Gen.

10:01:43 24 Q. Who does Gu Gen work for?

10:01:46 25 A. Safran Suzhou.

JAMES - DIRECT (McKenzie)

19

10:01:47 1 Q. I will read Gu's response.

10:01:52 2 "Still checking. They found that someone had connected

10:01:54 3 to our server via a tool called psexec. The period is from

10:02:00 4 July last year to February this year."

10:02:02 5 Will you please read the next message?

10:02:04 6 A. "No conclusion?"

10:02:08 7 Q. Directing your attention to the next message, the second

10:02:11 8 message sent at 9:46 a.m., will you please read that message?

10:02:17 9 A. The latest status from Suzhou: They found an intrusion

10:02:22 10 to our server through a psexec tool. The time frame is from

10:02:28 11 July last year to February this year."

10:02:31 12 Q. Who sent that message?

10:02:33 13 A. Xu Yanjun.

10:02:35 14 Q. To whom did he send it?

10:02:37 15 A. Chai Meng.

10:02:38 16 Q. And what is the location of Safran's subsidiary in China?

10:02:41 17 A. Suzhou.

10:02:42 18 Q. Directing your attention to the next message sent at 9:55

10:02:53 19 a.m., did Gu Gen send a message to the defendant which said,

10:02:59 20 "So far, no. They will examine by remotely connecting to this

10:03:02 21 server"?

10:03:06 22 A. He did.

10:03:06 23 Q. How did the defendant respond?

10:03:08 24 A. "Do they think China is hacking them?"

10:03:12 25 Q. And will you please read Gu's response?

JAMES - DIRECT (McKenzie)

20

10:03:15 1 **A.** "Don't think so."

10:03:18 2 **Q.** Directing your attention now to the messages sent on

10:03:22 3 August 18, 2014. Who sent the first message that we see on

10:03:28 4 that date?

10:03:29 5 **A.** Xu Yanjun.

10:03:31 6 **Q.** To whom did he send it?

10:03:32 7 **A.** Tian Xi.

10:03:34 8 **Q.** Please read the defendant's messages. I'll read Tian's

10:03:37 9 response.

10:03:38 10 **A.** "About that matter, any new situation?"

10:03:41 11 **Q.** "No new news. Should be an unsolved mystery."

10:03:50 12 **A.** "Ho, ho."

10:03:51 13 MR. MCKENZIE: For a final time, I would like to

10:03:53 14 return to Government's Exhibit 111, page 1, which is in

10:04:01 15 evidence, Your Honor.

10:04:01 16 BY MR. MCKENZIE:

10:04:04 17 **Q.** Will you please read the title of the document which is

10:04:09 18 displayed at the top of the screen?

10:04:11 19 **A.** "Employment Dismissal Record Form for Employers of

10:04:19 20 Suzhou Industrial Park."

10:04:20 21 **Q.** Please read the name that's listed at the top of the

10:04:23 22 screen.

10:04:23 23 **A.** Gu Gen.

10:04:26 24 **Q.** Scrolling down and directing your attention to the middle

10:04:28 25 of the screen, what was Gu's position?

JAMES - DIRECT (McKenzie)

21

10:04:32 1 **A.** Senior IT infrastructure manager and information
10:04:37 2 security officer.

10:04:40 3 **Q.** When it says "Type of" -- directing your attention to the
10:04:44 4 box below it, next to "Type of Contract Dissolution
10:04:49 5 (Termination)," which box has been selected?

10:04:52 6 **A.** The box for "Employer Initiated Dissolution" is
10:04:58 7 highlighted.

10:04:59 8 **Q.** Scrolling down, who is listed as the employer?

10:05:05 9 **A.** Safran Beijing Enterprise Management Company, Ltd.,
10:05:12 10 Suzhou Branch.

10:05:12 11 **Q.** And directing your attention to that same box, what is
10:05:15 12 listed as the date?

10:05:16 13 **A.** November 28 of 2018.

10:05:18 14 **Q.** I'd like to direct your attention now to page 6 of the
10:05:21 15 same exhibit.

10:05:30 16 Directing your attention to the top left. Who is the
10:05:34 17 sender of this letter?

10:05:34 18 **A.** Safran Aircraft Engines, Suzhou Co., Ltd.

10:05:41 19 **Q.** Who is the recipient of the letter?

10:05:43 20 **A.** Tian Xi.

10:05:45 21 **Q.** In the -- in that same column, what is the date of the
10:05:50 22 letter?

10:05:53 23 **A.** It appears to be November 13th of 2018.

10:05:57 24 **Q.** As displayed on the screen currently to your bottom left,
10:06:02 25 what is the title of this letter?

JAMES - DIRECT (McKenzie)

22

10:06:05 1 A. "Re: Termination Letter."

10:06:08 2 MR. MCKENZIE: If we can scroll down to where we can

10:06:12 3 begin with "Dear Sir."

10:06:12 4 BY MR. MCKENZIE:

10:06:14 5 Q. Will you please read the English section of this letter?

10:06:19 6 A. "Dear Sir,

10:06:21 7 "Following our meeting on October 31, 2018, the company

10:06:26 8 has decided to dismiss you from your position of

10:06:31 9 manufacturing engineer. This decision is justified by the

10:06:36 10 following reasons:

10:06:38 11 "You have materially breached the employer's rules and

10:06:41 12 regulation. Therefore, the company hereby terminates your

10:06:45 13 employment contract in accordance with its Article 7 and PRC

10:06:51 14 applicable laws, including Article 39 of the Labor Contract

10:06:55 15 Law of the PRC. Your employment contract entered with the

10:06:59 16 company on December 10, 2007, will terminate with immediate

10:07:07 17 effect. Therefore, you will leave the company on November

10:07:10 18 13, 2018.

10:07:11 19 "In consideration of the above, the company will not

10:07:14 20 pay you any compensation.

10:07:16 21 "Before leaving the company, please surrender any and

10:07:21 22 all relevant work, documents, equipment, and property,

10:07:26 23 together with all keys, relating to the company and/or any

10:07:30 24 of its clients to Patrick Calero.

10:07:39 25 "As from the date of the termination of your

JAMES - DIRECT (McKenzie)

23

10:07:40 1 employment, you will remain bound by the confidentiality
10:07:43 2 undertaking stipulated in your employment contract which
10:07:47 3 stipulates that you shall keep strictly secret and
10:07:54 4 confidential, and not disclose to any third party any and
10:07:58 5 all technical, economic, financial, or marketing information
10:08:03 6 acquired from the company and/or obtained because of your
10:08:07 7 activities in the company.

10:08:09 8 "The company reserves all rights to bring suits,
10:08:13 9 claims, or any other actions against you.

10:08:17 10 "Yours sincerely."

10:08:19 11 Q. And then what is -- who is listed as the company sending
10:08:23 12 the letter?

10:08:23 13 A. Safran Aircraft Engines, Suzhou Co., Ltd.

10:08:32 14 THE COURT: Counsel, I'd like to take a break at an
10:08:34 15 appropriate point.

10:08:35 16 MR. MCKENZIE: Perfect timing, Your Honor. The
10:08:37 17 government has no further questions.

10:08:40 18 THE COURT: Very well. We are going to recess for
10:08:44 19 20 minutes, until 10:30.

10:08:47 20 Members of the jury, as you know, please do not discuss
10:08:50 21 the case among yourselves or with anyone else. No independent
10:08:54 22 research. Continue to keep an open mind.

10:09:00 23 We'll rise as you leave.

10:09:02 24 THE COURTROOM DEPUTY: All rise for the jury.

10:09:03 25 (Jury out at 10:09 a.m.)

10:09:43 1 THE COURT: Jury's left the room and the door is
10:09:45 2 closed. We're going to break until 10:30, at least as to the
10:09:48 3 jury. That's my intention.
10:09:51 4 We can chat in 15 minutes or the issues that are arising
10:09:59 5 may not require attention yet. When is the witness to be
10:10:03 6 called that Mr. --
10:10:08 7 THE INTERPRETER: Your Honor, the interpreter is
10:10:09 8 having a hard time hearing you. I'm sorry.
10:10:13 9 THE COURT: That's okay.
10:10:19 10 Do I need to address the defense's concerns about Arthur
10:10:24 11 Gau now from the government's perspective?
10:10:28 12 MR. MANGAN: He is the next witness. It's a matter
10:10:30 13 of whether you wanted to wait until the next break or not.
10:10:35 14 We're fine either way.
10:10:36 15 THE COURT: Why don't we be seated and hear the
10:10:38 16 issue. We're outside the presence of the jury. We're talking
10:10:43 17 about the next witness.
10:10:46 18 Mr. Miedel, forget my lapse. I know exactly who you are.
10:10:52 19 MR. MIEDEL: You can just keep calling me the New
10:10:56 20 York lawyer. That's okay.
10:10:57 21 THE COURT: If you can take the mask off and tell me
10:11:00 22 what I can call you.
10:11:02 23 MR. MIEDEL: The New York lawyer.
10:11:03 24 THE COURT: I didn't want to do that.
10:11:06 25 MR. MIEDEL: Your Honor, I wanted to raise this

JAMES - DIRECT (McKenzie)

25

10:11:07 1 issue because, as I said, Arthur Gau is the next witness. And
10:11:10 2 according to the government's exhibit book, they, I think,
10:11:16 3 will attempt to introduce Exhibit 81a and 81b through Arthur
10:11:22 4 Gau.

10:11:26 5 Exhibit 81 is a Chinese letter, in Chinese, and 81b is
10:11:33 6 the English translation of it. And it essentially is a typed
10:11:37 7 letter that Arthur Gau will testify was given to him in 2003,
10:11:44 8 purportedly by an individual named Zha, Z-H-A, Rong, R-A-N-G
10:11:51 9 [sic], who I think the government will argue was somehow
10:11:53 10 associated with MSS, or at least later was.

10:11:58 11 And that letter contains a number of questions about what
10:12:04 12 seemed to be engineering questions or problems. We object to
10:12:12 13 the introduction of that exhibit for a couple of reasons. The
10:12:15 14 first is that it is hearsay. It is an out-of-court statement
10:12:21 15 obviously made, proposed for the truth of the matter because
10:12:25 16 the government wants to show that the document is asking
10:12:29 17 Arthur Gau specific engineering questions or presents
10:12:36 18 engineering issues that they want him to respond to.

10:12:41 19 There is no applicable hearsay exception because this
10:12:44 20 letter was created and given to Arthur Gau ten years before
10:12:49 21 the beginning of the conspiracy in this case. It was given in
10:12:53 22 2003. The conspiracy begins, according to the indictment, in
10:12:58 23 2013.

10:13:00 24 And if it's not being introduced for the truth, then it
10:13:04 25 has no relevance, because if it is not for purposes of the

JAMES - DIRECT (McKenzie)

26

10:13:09 1 charged conspiracy, the letter itself does not ask for any
10:13:14 2 specific trade -- it doesn't ask for the -- Mr. Gau to reveal
10:13:21 3 trade secrets. As noted, it was written 10 years before the
10:13:25 4 conspiracy. At that point in 2003, Mr. Xu was not involved in
10:13:30 5 that. There is no evidence that he was even working with Zha
10:13:39 6 Rong at that time. There is no evidence that Zha Rong was
10:13:42 7 working for MSS at the time. Arthur Gau will testify,
10:13:46 8 presumably, that he believe that Zha Rong was working for
10:13:50 9 NUAA.

10:13:52 10 In terms of relevance, it is absolutely more prejudicial
10:13:59 11 than probative, again because -- the probative value is
10:14:04 12 minimal again because it occurred ten years before the charged
10:14:08 13 conspiracy.

10:14:09 14 The document is signed by Zha Rong -- it's typed, so it's
10:14:16 15 not signed but it's typed with his name, but we don't actually
10:14:20 16 have any way of knowing who wrote it. It was not given to
10:14:23 17 Arthur Gau by Zha Rong; it was given to him by somebody else.
10:14:28 18 The document doesn't actually ask him to reveal any trade
10:14:32 19 secrets.

10:14:32 20 And I think that what the problem is, the prejudice is
10:14:35 21 that the jury could mistakenly conclude that this was a
10:14:41 22 decades-long pattern in an effort to get Mr. Gau to cough up
10:14:50 23 trade secrets when, in fact, there is -- this document doesn't
10:14:52 24 advance that theory at all. And the jury could mistakenly
10:14:55 25 consider it to be meaningful when it's not. Thank you.

JAMES - DIRECT (McKenzie)

27

10:15:01 1 THE COURT: When did this issue -- when did you
10:15:05 2 become aware of it?

10:15:07 3 MR. MIEDEL: Well, I was aware of it for a while
10:15:10 4 but, again, Mr. Gau wasn't scheduled to be testifying until
10:15:15 5 today. So I notified the government of it this morning. I
10:15:18 6 think they are prepared to argue it.

10:15:19 7 THE COURT: The Court prefers to get a heads-up.

10:15:25 8 MR. MIEDEL: I understand.

10:15:26 9 THE COURT: The government wish to be heard?

10:15:28 10 MR. MANGAN: Yes, Your Honor. What I would say in
10:15:34 11 response is, first of all, this does pertain to an individual
10:15:39 12 named Zha Rong, and there's already been evidence submitted in
10:15:42 13 the case relating to Mr. Zha Rong and his relationship to the
10:15:46 14 defendant. As we've asserted, he is the direct supervisor of
10:15:51 15 the defendant within the MSS.

10:15:59 16 What we are going to go through with Arthur Gau is a
10:16:02 17 number of trips that he took over to China and that he met
10:16:04 18 with Zha Rong on a number of those trips and then eventually
10:16:08 19 was introduced to the defendant.

10:16:10 20 And so our assertion, Your Honor, is that the
10:16:13 21 relationship started with Zha Rong. It was more or less
10:16:16 22 passed over to the defendant, to kind of continue with the
10:16:21 23 relationship in later visits, and that will be the heart of
10:16:24 24 the testimony, will be these later visits. However, to
10:16:27 25 explain sort of where it all started, his first visits were,

JAMES - DIRECT (McKenzie)

28

10:16:32 1 you know, back in that time period, when he went back to China
10:16:37 2 in, you know, the year 2000 and so on.

10:16:39 3 When he got back to the U.S. after one of these visits
10:16:42 4 where he met with an NUAA professor and he met with Zha Rong,
10:16:49 5 at that time the son of the professor showed up at Mr. Gau's
10:16:52 6 house in the U.S. and handed him this letter. So in the
10:16:57 7 letter it is written and signed by Zha Rong asking him to see
10:17:04 8 if he's willing to do a project that would prepare a lot of
10:17:06 9 technical information.

10:17:08 10 So from our standpoint, Your Honor, there is two things.
10:17:11 11 One, to the extent it is simply a question or it is asking him
10:17:16 12 to do work and setting forth what they are asking for, that is
10:17:19 13 not hearsay. It's simply a question or it's a request or a
10:17:24 14 demand. Those are not assertions of fact.

10:17:29 15 In addition, Your Honor, to the extent any of the letter
10:17:31 16 would be interpreted as an assertion of fact, we would assert
10:17:35 17 that statements by Mr. Zha Rong are statements of a
10:17:43 18 co-conspirator and therefore also would be admissible.

10:17:46 19 As to the time frame, Your Honor, this is really -- we
10:17:48 20 understand we are limited by the years in the indictment
10:17:51 21 regarding the defendant's conduct. And that is from 2013, you
10:17:56 22 know, to the time of his arrest. This is kind of introductory
10:18:01 23 evidence to help the witness explain where the relationship
10:18:06 24 started and, you know, then ultimately explain where it went
10:18:11 25 in the years of 2016 through 2017.

JAMES - DIRECT (McKenzie)

29

10:18:16 1 THE COURT: So how is the letter necessary? Why
10:18:18 2 can't Gau just explain the origins of their relationship?
10:18:22 3 MR. MANGAN: He can, Your Honor. What we wanted to
10:18:26 4 also bring out was that at one point Zha Rong did make an ask
10:18:32 5 for him to do technical work that he had declined. And then
10:18:38 6 there is a break in time, and then the relationship is
10:18:40 7 restarted. So we did see some significance in that.
10:18:48 8 MR. MIEDEL: Your Honor, may I respond?
10:18:49 9 THE COURT: Yes, you get the reply.
10:18:52 10 MR. MIEDEL: A couple things. First of all, while
10:18:54 11 the government has some evidence that Zha Rong worked with
10:18:57 12 Mr. Xu or was his supervisor in, I don't know, 2015, 2016,
10:19:02 13 that's 13 years after this letter. There is zero evidence
10:19:05 14 that Zha Rong worked with Mr. Xu in 2003.
10:19:09 15 Secondly, to the extent that the government is simply
10:19:13 16 suggesting that this letter asked for, quote, technical work,
10:19:18 17 that's irrelevant. The issue at this trial is whether Mr. Xu
10:19:23 18 conspired or attempted to gain trade secrets, not technical
10:19:27 19 work. But it is -- and so there is a ten-year gap between any
10:19:35 20 correspondence between Mr. Gau in 2003 and Mr. Zha Rong in
10:19:40 21 2003 and the next time that they talk. So the suggestion that
10:19:43 22 there is some sort of pattern or a beginning of a relationship
10:19:47 23 is simply belied by -- will be belied by the testimony of
10:19:51 24 Mr. Gau. There was no contact between them for a decade. And
10:19:55 25 so it is simply way outside the scope of the conspiracy. It

JAMES - DIRECT (McKenzie)

30

10:20:00 1 cannot -- you cannot be a co-conspirator outside the scope of
10:20:05 2 the conspiracy. And so it's just, I think, improper to admit
10:20:11 3 this document.

10:20:11 4 And I think -- I agree with Your Honor that Mr. Gau can
10:20:15 5 certainly talk about his visits to China in 1997 and 2000 and
10:20:19 6 2002 and who he met there if he wants, but the introduction of
10:20:24 7 this document is prejudicial.

10:20:32 8 THE COURT: The Court sustains the defendant's
10:20:35 9 objection. What Zha Rong may have been doing in 2003 is not
10:20:41 10 relevant, the background as to how Mr. Gau came to be involved
10:20:47 11 with the defendant, and he can explain that, he can explain, I
10:20:53 12 suppose, that he knew Zha Rong in 2003 and later met the
10:20:58 13 defendant.

10:20:58 14 If the defendant on cross questions Gau's explanation of
10:21:02 15 how he initially came to meet Zha Rong and, later, defendant,
10:21:08 16 then, by all means, the letter would start to become relevant.
10:21:13 17 But as an initial matter, Gau can explain it as an initial
10:21:17 18 matter without the letter, and the objection is sustained.

10:21:21 19 We're going to go into our recess unless there is
10:21:24 20 something else I need to address outside the presence of the
10:21:27 21 jury at this moment. Is there from the government?

10:21:30 22 MR. MANGAN: No, Your Honor.

10:21:31 23 THE COURT: The defense?

10:21:33 24 MR. MIEDEL: No, Your Honor. Thank you.

10:21:34 25 THE COURT: We're in recess.

10:21:37 1 THE COURTROOM DEPUTY: All rise. This court's now
10:21:38 2 in recess.

10:21:39 3 (Recess from 10:21 until 10:41 a.m.)

10:41:53 4 THE COURT: Back in the courtroom late. The jury's
10:41:57 5 not yet here.

10:42:01 6 We've had some drama. When my daughters used to live at
10:42:07 7 home with my wife and me, we had drama every day. I am well
10:42:11 8 trained in drama. It arises out of primarily the fact that
10:42:17 9 the second interpreter who had joined us today has indicated
10:42:21 10 that she typically translates hospital proceedings and does
10:42:27 11 not feel that she is adequately trained to assist us in a
10:42:33 12 courtroom that's intimidating with a bunch of lawyers. And I
10:42:39 13 appreciate her speaking the truth, and I have released her.

10:42:43 14 That means we're going to have to go in chunks as we've
10:42:47 15 been doing previously. We're going to work as hard as we can
10:42:51 16 to get a second one because the current interpreter is
10:42:59 17 whipped. But she has agreed with me that she will take a deep
10:43:05 18 breath out of recognition that we're going to take short
10:43:08 19 breaks.

10:43:10 20 So we can call for the jury now.

10:44:32 21 THE COURTROOM DEPUTY: All rise for the jury now.

10:44:34 22 (Jury in at 10:44 a.m.)

10:45:06 23 THE COURT: You may all be seated. The 15 jurors
10:45:09 24 have rejoined us.

10:45:11 25 And I kept you waiting again. And I apologize for that.

JAMES - CROSS (Cors)

32

10:45:18 1 I hate that. My mother would be all over me if I were keeping
10:45:24 2 a bunch of important people waiting. But there are times when
10:45:28 3 you leave that I have to address stuff that I need to deal
10:45:31 4 with outside your presence. The long break here had nothing
10:45:36 5 to do with any of the lawyers or the parties. I had to deal
10:45:39 6 with something. It's on me. I hope you will forgive me.

10:45:45 7 So we will continue with testimony. Redirect, is that
10:45:52 8 right?

10:45:52 9 MR. MCKENZIE: Cross-examination at this time, Your
10:45:54 10 Honor.

10:45:54 11 THE COURT: Cross-examination.

10:45:56 12 MS. CORS: Thank you, Your Honor.

10:45:57 13 THE COURT: You may approach.

10:46:00 14 The witness remains under oath. The attorney for the
10:46:03 15 defense has an opportunity to ask questions.

10:46:07 16 MS. CORS: Thank you, Your Honor. And if I go too
10:46:12 17 fast, I assume someone will let me know to slow down so that
10:46:17 18 the interpreter can keep up.

10:46:17 19 THE COURT: You better believe it.

10:46:18 20 **CROSS-EXAMINATION**

10:46:18 21 BY MS. CORS:

10:46:20 22 Q. Good morning, Special Agent. How are you today?

10:46:22 23 A. I'm good. How are you?

10:46:24 24 Q. Good.

10:46:32 25 Over the past couple days you have been asked to read

JAMES - CROSS (Cors)

33

10:46:35 1 from a number of text messages involving Mr. Xu, correct?

10:46:39 2 **A.** I have.

10:46:40 3 **Q.** And were these documents that you obtained through any

10:46:45 4 forensic analysis you conducted?

10:46:47 5 **A.** The text messages were not.

10:46:49 6 **Q.** Okay. Where did you get those text messages from?

10:46:52 7 **A.** I received them from the search warrant data from the

10:46:57 8 Cincinnati -- Cincinnati case.

10:47:01 9 **Q.** And you testified regarding your background in cyber

10:47:07 10 counterintelligence, correct? And computer security, and

10:47:14 11 explained to the jury much of the education you have had

10:47:19 12 relating to computers.

10:47:20 13 Do you have any training as an engineer?

10:47:22 14 **A.** I do not have any training as an engineer.

10:47:24 15 **Q.** And any training in the aviation field?

10:47:27 16 **A.** I do not.

10:47:28 17 **Q.** Okay. Thank you.

10:47:34 18 Now, you have testified about events in Suzhou relating

10:47:44 19 to what I believe you described as the insertion of a USB

10:47:49 20 drive into a computer in January of 2014, correct? January

10:47:55 21 25, 2014?

10:47:57 22 **A.** Yes.

10:47:58 23 **Q.** Okay. What I'd like to do is walk through the timeline

10:48:03 24 of events that you've testified to. So as I understand it, on

10:48:11 25 January 25, 2014, a USB was inserted into the computer of

JAMES - CROSS (Cors)

34

10:48:20 1 Mr. Hascoet, correct?

10:48:22 2 A. That is correct.

10:48:22 3 Q. And that occurred in, you believe and have testified, his

10:48:27 4 office in Suzhou; is that correct?

10:48:29 5 A. I don't know where it was inserted physically.

10:48:32 6 Q. Okay. So you don't know where it was inserted. But at

10:48:38 7 some point on that date, based on your forensic analysis, this

10:48:43 8 USB drive was inserted into his computer. Is that fair?

10:48:46 9 A. That is correct.

10:48:47 10 Q. And you testified that on that same day, from that USB

10:48:55 11 drive, a certain virus malware was placed on the computer of

10:49:02 12 Mr. Hascoet, correct?

10:49:02 13 A. That is correct.

10:49:03 14 Q. And then I believe you testified that shortly thereafter

10:49:08 15 you read some text messages, I believe it was maybe the day

10:49:11 16 after, where there were communications about someone looking

10:49:16 17 at that computer, correct?

10:49:17 18 A. That is correct.

10:49:18 19 Q. And can you explain to the jury again what that meant to

10:49:23 20 you?

10:49:23 21 A. What that means to me is somebody verified that the

10:49:27 22 computer had beacons in, and they would have had the

10:49:30 23 ability to look at files on the computer if they wanted to.

10:49:34 24 Q. So in or around the 25th, 26th, based on your review of

10:49:41 25 that computer and what happened with that malware and the

JAMES - CROSS (Cors)

35

10:49:45 1 beaconing, it's your understanding that at that point in time
10:49:49 2 someone who had access to this server, wherever it was, would
10:49:52 3 have had the ability to access the computer of Mr. Hascoet,
10:49:58 4 correct?
10:49:58 5 **A.** That is correct.
10:49:59 6 **Q.** And that would include looking at items on the computer;
10:50:03 7 is that correct?
10:50:03 8 **A.** That is correct.
10:50:05 9 **Q.** Okay. And I believe you mentioned that would also
10:50:08 10 provide access to upload or download documents; is that
10:50:12 11 correct?
10:50:12 12 **A.** Upload or download files.
10:50:17 13 **Q.** Files, okay.
10:50:18 14 **A.** Yes.
10:50:19 15 **Q.** And I believe, based on your testimony, that that laptop
10:50:22 16 became connected to that server, I think, around the 27th of
10:50:25 17 January of '14. Does that sound correct to you?
10:50:29 18 **A.** There was evidence on the hard drive that it -- the
10:50:33 19 Sakula malware connected outbound as of that date.
10:50:37 20 **Q.** And that was to that domain you were talking about
10:50:39 21 earlier; is that correct?
10:50:42 22 **A.** Yes, that's correct.
10:50:43 23 **Q.** And what was that domain again?
10:50:44 24 **A.** There was two domains. One was oa.ameteksen.com, and
10:50:54 25 the other one was secure.safran-group.com.

JAMES - CROSS (Cors)

36

10:51:01 1 **Q.** And then on or around January 30th, was that when, based
10:51:05 2 on your forensic analysis, some additional malware virus, the
10:51:11 3 key logger, was installed on that computer?
10:51:13 4 **A.** I believe that is correct.
10:51:14 5 **Q.** Okay. And at the time -- strike that. Then near the end
10:51:26 6 of January, around January 31, 2014, I believe in your report
10:51:33 7 there is an indication that the computer starts communicating
10:51:35 8 with secure.safran-group.com; is that correct?
10:51:41 9 **A.** The computer would have continued to communicate to
10:51:45 10 that domain, yes.
10:51:46 11 **Q.** Okay. So it continues to communicate, continues to
10:51:48 12 provide access. Whoever has access to that domain has access
10:51:52 13 to Mr. Hascoet's computer, correct?
10:51:53 14 **A.** That would be correct.
10:51:54 15 **Q.** Okay. And then when did that computer, from your
10:52:00 16 recollection, stop communicating with that domain?
10:52:09 17 **A.** Based on the evidence available on the hard drive, I
10:52:12 18 believe it was on or about February 20 -- February 14th, if
10:52:17 19 I remember correctly.
10:52:18 20 **Q.** Okay. So the computer stops communicating around
10:52:21 21 February 14th with this domain. And then at the same time,
10:52:26 22 does the key logger stop recording or was that a little later?
10:52:31 23 **A.** I would have to go back and look at the key logger data
10:52:37 24 to see when the key logger stopped.
10:52:39 25 **Q.** About around the same time, is it your recollection?

JAMES - CROSS (Cors)

37

10:52:42 1 **A.** It would probably be around the same time.

10:52:45 2 **Q.** Okay. I think I've seen February 17, 2014?

10:52:48 3 **A.** Okay.

10:52:48 4 **Q.** Does that sound --

10:52:49 5 **A.** Yeah, that sounds correct.

10:52:50 6 **Q.** Okay. So from January 25th, we know that, based on your

10:52:56 7 forensic analysis, malware is put on this computer, we know

10:53:00 8 that the computer starts communicating with a domain, and we

10:53:04 9 know that that communication stops on or around February 14th,

10:53:10 10 correct?

10:53:10 11 **A.** That's --

10:53:13 12 **Q.** So three to four weeks, correct?

10:53:15 13 **A.** Yep.

10:53:16 14 **Q.** And based on your analysis, at any point during that time

10:53:19 15 was an effort made to target any documents on that computer?

10:53:22 16 **A.** Based on the evidence on the hard drive? It's hard to

10:53:32 17 determine that.

10:53:34 18 **Q.** Okay. And based on your forensic analysis, was there any

10:53:39 19 effort to obtain or download a trade secret from that

10:53:43 20 computer?

10:53:44 21 **A.** That could not be determined from my analysis. I did

10:53:48 22 not find evidence of that.

10:53:49 23 **Q.** Okay. But you did find analysis, did you not, that after

10:53:55 24 these -- this virus/malware was installed on the computer, was

10:54:03 25 anything accessed after January 30th?

JAMES - CROSS (CORS)

38

10:54:09 1 **A.** I could not determine that from my analysis. I could
10:54:13 2 not determine that anything was accessed.

10:54:15 3 **Q.** Okay. So you don't know anything either way?

10:54:18 4 **A.** No, don't know either way.

10:54:20 5 **Q.** Now, this computer was also forensically analyzed by the
10:54:29 6 French Intelligence Service as well; is that correct?

10:54:32 7 **A.** That is correct.

10:54:32 8 **Q.** And a report dated September 17, 2014, does that sound
10:54:38 9 familiar? That was prepared by the French?

10:54:43 10 **A.** That's probably correct.

10:54:43 11 **Q.** And do you recall as one of the findings of that report
10:54:47 12 that any data recovery, if any took place, did not appear to
10:54:52 13 be targeted in any matter?

10:54:55 14 MR. MCKENZIE: Objection, Your Honor.

10:54:56 15 THE COURT: Your objection?

10:54:58 16 MR. MCKENZIE: Objection, Your Honor.

10:54:59 17 THE COURT: Basis?

10:55:01 18 MR. MCKENZIE: Hearsay.

10:55:03 19 MS. CORS: Your Honor, I am asking for a finding. I
10:55:05 20 am not asking for him to repeat what was in the report.

10:55:11 21 THE COURT: Objection's overruled.

10:55:16 22 You can answer the question, if you remember it.

10:55:20 23 THE WITNESS: Could you repeat the question, please?

10:55:22 24 BY MS. CORS:

10:55:22 25 **Q.** Sure. So as -- was it your understanding that one of the

JAMES - CROSS (Cors)

39

10:55:26 1 findings of this report was that any data recovery did not

10:55:29 2 appear to be targeted in any manner?

10:55:36 3 **A.** I don't recall that statement, and I'm a little bit

10:55:42 4 confused on the term "data recovery" being used there. Is

10:55:46 5 that downloading of files, I guess is what my question is?

10:55:53 6 **Q.** Did you have any understanding as to whether the French

10:55:58 7 forensic analysis concluded that any files were exported?

10:56:03 8 **A.** I don't believe they could conclude that any files were

10:56:07 9 exported.

10:56:10 10 **Q.** So it appears, from your perspective, their conclusions

10:56:13 11 were consistent with the conclusions of your own forensic

10:56:16 12 analysis?

10:56:17 13 **A.** That is correct.

10:56:19 14 **Q.** Now, your report analyzed a file, a self-extracting RAR

10:56:29 15 file, I believe, that contained images on Mr. Hascoet's

10:56:32 16 computer; is that correct?

10:56:33 17 **A.** That is correct.

10:56:35 18 **Q.** And can you explain to the jury what -- what those images

10:56:38 19 were?

10:56:39 20 **A.** The images were pictures of the various locations that

10:56:45 21 we determined to be in Nanjing, Jiangsu Province.

10:56:52 22 **Q.** They appeared to be vacation photos?

10:56:55 23 **A.** They would be consistent with vacation photos.

10:56:57 24 **Q.** And in the course of your investigation, you reviewed, as

10:57:06 25 I understand, communications involving Tian Xi, correct?

JAMES - CROSS (Cors)

40

10:57:11 1 **A.** Tian Xi, yes.

10:57:13 2 **Q.** And many of those communications you read here for the

10:57:16 3 jury, correct?

10:57:16 4 **A.** That is correct.

10:57:18 5 THE COURT: Ms. Cors, could you keep your voice up,

10:57:21 6 please?

10:57:22 7 MS. CORS: Yes. Sorry, Your Honor.

10:57:23 8 BY MS. CORS:

10:57:24 9 **Q.** And in those communications do you recall seeing any

10:57:26 10 reference to trade secrets?

10:57:28 11 **A.** I do not.

10:57:29 12 **Q.** Do you recall seeing any discussion about obtaining

10:57:32 13 documents from Safran?

10:57:34 14 **A.** I do not.

10:57:35 15 **Q.** Do you recall any reference to composite materials?

10:57:41 16 **A.** I do not.

10:57:42 17 **Q.** Do you recall any reference to aviation technology?

10:57:48 18 **A.** I do not.

10:57:49 19 **Q.** And do you recall any reference to fan blade technology?

10:57:58 20 **A.** I do not.

10:57:59 21 **Q.** Okay. And then you were asked to read, and I understand

10:58:01 22 you reviewed, communications involving Mr. Gu Gen, correct?

10:58:08 23 **A.** Correct.

10:58:09 24 **Q.** And who is Mr. Gu Gen again?

10:58:13 25 **A.** Gu Gen is the IT infrastructure and information

JAMES - CROSS (Cors)

41

10:58:18 1 security officer for Safran Suzhou.

10:58:20 2 **Q.** Okay. And with respect to these communications, do these

10:58:23 3 communications reference any effort to obtain documents?

10:58:27 4 **A.** They do not.

10:58:29 5 **Q.** Do they reference any attempt to steal trade secrets?

10:58:34 6 **A.** They do not.

10:58:38 7 **Q.** Do they reference any -- do they reference composite

10:58:41 8 materials?

10:58:41 9 **A.** No.

10:58:41 10 **Q.** Do they reference fan blades, including fan blades

10:58:45 11 designed by GE?

10:58:48 12 **A.** They do not.

10:58:49 13 **Q.** Okay. And there were additional communications you were

10:58:51 14 asked to review and read into the record regarding alleged

10:58:55 15 colleagues of Mr. Xu, correct?

10:58:59 16 **A.** That is correct.

10:59:00 17 **Q.** Chai Meng?

10:59:02 18 **A.** Chai Meng.

10:59:03 19 **Q.** And I am going to ask you the same series of questions.

10:59:06 20 In those communications, was there any reference about

10:59:08 21 obtaining documents from Safran Suzhou or any entity of

10:59:14 22 Safran?

10:59:15 23 **A.** There were not.

10:59:16 24 **Q.** Were there any reference to trying to obtain trade

10:59:20 25 secrets?

JAMES - CROSS (CORS)

42

10:59:20 1 **A.** There weren't.

10:59:21 2 **Q.** Any reference to composite materials?

10:59:25 3 **A.** There was not.

10:59:28 4 **Q.** Any reference to aviation fan blades?

10:59:34 5 **A.** No.

10:59:35 6 **Q.** Or GE Aviation?

10:59:37 7 **A.** There was not.

10:59:38 8 **Q.** Now, Mr. Gu Gen was head of security, correct?

10:59:44 9 **A.** He is head of information security.

10:59:46 10 **Q.** And in your experience, would someone who's head of

10:59:50 11 information security have pretty broad access to the databases

10:59:55 12 and computers of the company?

10:59:57 13 **A.** Generally, they would.

10:59:59 14 **Q.** Yet, I believe you just testified there was never a

11:00:01 15 request of Mr. Gu Gen, to your knowledge, to -- to use that

11:00:05 16 access to obtain any information from the company, correct?

11:00:08 17 **A.** Correct.

11:00:09 18 **Q.** Now, on your direct testimony you talked a little bit

11:00:19 19 about the MSS and its local office in Nanjing, the JSSD,

11:00:26 20 correct?

11:00:27 21 MR. MCKENZIE: Objection, Your Honor.

11:00:28 22 THE COURT: Basis?

11:00:30 23 MR. MCKENZIE: Assumes facts not in evidence.

11:00:32 24 THE COURT: Sustained as to form.

11:00:40 25 BY MS. CORS:

JAMES - CROSS (Cors)

43

11:00:41 1 **Q.** Mr. James, you were shown documents that the government
11:00:43 2 alleged related to Mr. Xu, correct?

11:00:47 3 **A.** Mr. Xu Yanjun.

11:00:52 4 **Q.** And his alleged role with MSS in its office in Nanjing,
11:00:58 5 the JSSD, correct?

11:00:59 6 **A.** I was shown that.

11:01:01 7 **Q.** The MSS and the JSSD have multiple functions, do they
11:01:15 8 not?

11:01:16 9 **A.** They do.

11:01:17 10 **Q.** Okay. I believe you've testified in the past that in
11:01:20 11 your view they are sort of a combination of the FBI and CIA,
11:01:25 12 correct?

11:01:26 13 MR. MCKENZIE: Objection, Your Honor. Outside the
11:01:28 14 scope of direct.

11:01:32 15 MS. CORS: May I address this, Your Honor? On
11:01:34 16 direct, the issue of Mr. Xu and his employment with the MSS
11:01:39 17 was brought up. On direct the issue of an incursion into a
11:01:44 18 computer was brought up. I'm simply trying to explore what
11:01:48 19 could be the basis for an incursion.

11:01:53 20 THE COURT: The Court overrules the objection. I am
11:01:56 21 going to give you some latitude.

11:01:58 22 MR. MCKENZIE: Your Honor, I am going to make a
11:02:01 23 second renewed objection under different grounds of improper
11:02:04 24 impeachment by referencing prior testimony without asking a
11:02:07 25 direct question first.

JAMES - CROSS (Cros)

44

11:02:10 1 THE COURT: Overruled.

11:02:11 2 Please proceed.

11:02:14 3 MS. CORS: Thank you, Your Honor.

11:02:15 4 BY MS. CORS:

11:02:15 5 Q. Now, with respect to the MSS and the -- let me start with

11:02:19 6 this.

11:02:20 7 You had -- in connection with your investigation in the

11:02:25 8 Southern District of California, did you provide testimony to

11:02:28 9 the grand jury?

11:02:29 10 A. I did.

11:02:30 11 Q. Okay. And as part of that testimony, did you opine on

11:02:35 12 the roles and functions of the MSS and its office, JSSD and

11:02:40 13 Nanjing?

11:02:41 14 A. Yes.

11:02:41 15 Q. And do you recall identifying some of those functions as

11:02:46 16 somewhat of a combination between the FBI and CIA?

11:02:49 17 A. That would be correct.

11:02:51 18 Q. And you identified one of the primary responsibilities of

11:02:57 19 MSS and JSSD as collecting of intelligence, correct?

11:03:03 20 A. That is correct.

11:03:06 21 Q. Intelligence, by definition information?

11:03:12 22 A. That could be another term for intelligence.

11:03:14 23 Q. It could also include open-source information; is that

11:03:17 24 correct?

11:03:17 25 A. It could.

JAMES - CROSS (Cors)

45

11:03:18 1 Q. Some of the other functions, I believe you identified
11:03:22 2 nonmilitary foreign intelligence; is that correct?
11:03:24 3 A. That is correct.
11:03:25 4 Q. And then you also identified as a function of both the
11:03:29 5 MSS and the JSSD office performing political and domestic
11:03:35 6 security. Do you recall that?
11:03:37 7 A. I do.
11:03:37 8 Q. And could you explain to the jury what your understanding
11:03:41 9 of political and domestic security is?
11:03:44 10 A. That would be looking for internal spies inside of
11:03:51 11 China.
11:03:51 12 Q. Could it also include monitoring and surveilling
11:03:54 13 foreigners or individuals who are in China?
11:03:56 14 A. It could.
11:03:57 15 Q. Could it also include monitoring and surveilling
11:04:00 16 companies that are operating within China's borders?
11:04:03 17 A. It could.
11:04:06 18 Q. And, in fact, would you agree that China views cyberspace
11:04:11 19 within its national borders as a proper area of control?
11:04:17 20 MR. MCKENZIE: Objection as to first being outside
11:04:20 21 the scope and, second, relevance.
11:04:22 22 THE COURT: Second, what?
11:04:24 23 MR. MCKENZIE: Relevance as to his opinion.
11:04:29 24 THE COURT: Overruled.
11:04:31 25 I'm going to need to break momentarily, but finish up.

JAMES - CROSS (Cros)

46

11:04:36 1 MS. CORS: Okay. I can finish this up.

11:04:37 2 BY MS. CORS:

11:04:38 3 Q. And as part of any functions with respect to political

11:04:41 4 and domestic security, there are a number of methods the

11:04:46 5 Chinese government can use to do that; isn't that correct?

11:04:49 6 A. That is correct.

11:04:50 7 Q. Okay. Do some of those include searching hotel rooms?

11:04:54 8 A. I'm not familiar with exactly what the MSS does or

11:04:58 9 doesn't do inside of China.

11:05:01 10 Q. In terms of monitoring, surveilling, in your experiences

11:05:05 11 as a cyber expert, could bugging or intruding into someone's

11:05:10 12 computer to monitor that computer be a technique that --

11:05:14 13 A. That could be.

11:05:15 14 Q. -- is used?

11:05:16 15 Is that a technique that governments sometimes use to

11:05:18 16 conduct such surveillance?

11:05:20 17 A. It could be.

11:05:23 18 THE COURT: I'm going to interject here and ask if

11:05:25 19 we can break.

11:05:27 20 MS. CORS: Certainly, Your Honor.

11:05:29 21 THE COURT: And I think we're straying a bit, but I

11:05:32 22 gave you some latitude.

11:05:33 23 Members of the jury, we are going to break for 20

11:05:36 24 minutes. During the break, take a break. As you know, don't

11:05:39 25 discuss the case among yourselves or with anyone else. No

JAMES - CROSS (CORS)

47

11:05:42 1 independent research. Continue to keep an open mind.

11:05:47 2 Out of respect for you, we'll rise as you leave for 20

11:05:50 3 minutes.

11:05:51 4 THE COURTROOM DEPUTY: All rise for the jury.

11:05:52 5 (Jury out at 11:05 a.m.)

11:06:31 6 THE COURT: The jury's left the room. The door is

11:06:34 7 closed. Is there anything that requires my attention before

11:06:37 8 we break for 20 minutes? First, from the government?

11:06:41 9 MR. MCKENZIE: No, Your Honor.

11:06:42 10 THE COURT: From the defense?

11:06:43 11 MS. CORS: No, Your Honor.

11:06:44 12 THE COURT: Very well.

11:06:46 13 Let the record reflect that Judge Cole is here observing

11:06:49 14 my work during recess.

11:06:52 15 THE COURTROOM DEPUTY: The court is now in recess.

11:06:54 16 (Recess from 11:06 a.m. until 11:31 a.m.)

11:31:17 17 THE COURT: May we call for the jury from the

11:31:20 18 government's perspective?

11:31:23 19 MR. MCKENZIE: Yes, Your Honor.

11:31:24 20 THE COURT: And from the defense as well?

11:31:26 21 MS. CORS: Yes, Your Honor.

11:31:27 22 THE COURT: Let's call for the jury. Let me get my

11:31:28 23 mask. You can call for the jury.

11:32:38 24 THE COURTROOM DEPUTY: All rise for the jury.

11:32:39 25 (Jury in at 11:32 a.m.)

JAMES - REDIRECT (McKenzie)

48

11:33:10 1 THE COURT: You may all be seated. Thank you.

11:33:17 2 The 15 jurors have rejoined us after a break. Thank you

11:33:21 3 for your patience.

11:33:22 4 We'll continue with the testimony of this witness.

11:33:26 5 MS. CORS: Thank you, Your Honor.

11:33:30 6 Your Honor, I have no further questions for this witness.

11:33:33 7 Thank you.

11:33:33 8 THE COURT: Very well.

11:33:34 9 Redirect, if any?

11:33:41 10 MR. MCKENZIE: Very briefly, Your Honor.

11:33:44 11 THE COURT: Very well.

11:33:46 12 **REDIRECT EXAMINATION**

11:33:46 13 BY MR. MCKENZIE:

11:33:52 14 Q. Special Agent James, when you analyzed the Sakula

11:33:56 15 malware, were you able to determine whether or not it beaconed

11:34:01 16 out to a domain?

11:34:04 17 A. Yes, I was.

11:34:05 18 Q. Were you able to determine whether any particular files

11:34:10 19 were transferred from the computer to anywhere else?

11:34:16 20 A. I could not determine that.

11:34:18 21 Q. Why not?

11:34:19 22 A. Depending on how the files are transferred, our records

11:34:28 23 are not maintained on the hard drive so it's really hard to

11:34:31 24 determine that after the fact. Generally, you would need to

11:34:34 25 actually watch the transfer occur.

JAMES - REDIRECT (McKenzie)

49

11:34:37 1 **Q.** And so just to be clear, is it the case that you
11:34:41 2 determined that no files were transferred, or is it the case
11:34:45 3 that you could not determine what files, if any, were
11:34:49 4 transferred?

11:34:50 5 **A.** There was no evidence to support whether or not files
11:34:53 6 were transferred either way.

11:35:00 7 **Q.** During your years of experience in cyber intrusion cases
11:35:18 8 involving remote access trojans, is part of the purpose that
11:35:24 9 they're installed to take files?

11:35:27 10 MS. CORS: Objection, Your Honor.

11:35:28 11 THE COURT: Basis?

11:35:30 12 MS. CORS: Leading and beyond the scope.

11:35:33 13 THE COURT: Overruled.

11:35:34 14 Don't lead the witness. Go ahead, ask.

11:35:40 15 BY MR. MCKENZIE:

11:35:41 16 **Q.** As part of your experience, what are some of the reasons,
11:35:48 17 some of the main reasons that you've experienced for why
11:35:52 18 people installed remote access trojans on computers?

11:35:57 19 **A.** Some of the primary reasons are, one, to gain access to
11:36:00 20 the computer so that you can use it to do what your motive
11:36:04 21 is. Once you have access, you can run commands and
11:36:10 22 compromise other computers on the network.

11:36:12 23 In this case, they used computers that were compromised
11:36:16 24 to compromise other companies.

11:36:19 25 MS. CORS: Objection, Your Honor.

JAMES - RECROSS (Cors)

50

11:36:20 1 THE COURT: Beyond the scope?

11:36:22 2 MS. CORS: Yes, beyond the scope.

11:36:24 3 THE COURT: Sustained.

11:36:26 4 MR. MCKENZIE: No further questions, Your Honor.

11:36:27 5 THE COURT: Very well. Redirect or recross on

11:36:32 6 redirect?

11:36:33 7 MS. CORS: Thank you, Your Honor.

11:36:35 8 **RECROSS-EXAMINATION**

11:36:35 9 BY MS. CORS:

11:36:38 10 Q. Special Agent James, you just testified that this type of

11:36:42 11 virus malware can be used to gain access to achieve motives,

11:36:46 12 correct?

11:36:46 13 A. That is correct.

11:36:46 14 Q. And in this instance, you are not in any position to know

11:36:49 15 what those motives were, correct?

11:36:54 16 A. Can we be more specific on the question?

11:36:57 17 Q. Well, there can be many different reasons why a person or

11:37:02 18 entity may seek to install this type of file on a computer,

11:37:07 19 correct?

11:37:08 20 A. That is correct.

11:37:08 21 Q. And one of those reasons could be to gain access to the

11:37:12 22 computer and to see what is in the computer to surveil, to

11:37:16 23 monitor, correct?

11:37:17 24 A. That is correct.

11:37:23 25 MS. CORS: No further questions. Thank you.

JAMES - RECROSS (Cors)

51

11:37:24 1 MR. MCKENZIE: Nothing further, Your Honor. Thank

11:37:26 2 you.

11:37:26 3 THE COURT: Are you going back to San Diego?

11:37:28 4 THE WITNESS: I hope so.

11:37:30 5 THE COURT: Travel safe. You may step down, sir.

11:37:33 6 THE WITNESS: Thank you.

11:37:45 7 THE COURT: Sort of awkward timing. Where are we from

11:37:47 8 the government's perspective? Do we need to break at this

11:37:50 9 point?

11:37:51 10 MR. MANGAN: We are ready to call the next witness.

11:37:53 11 It's up to you, Your Honor.

11:37:54 12 THE COURT: And you don't need the issue I need to

11:37:56 13 chat with you about addressed at this time?

11:37:58 14 MR. MANGAN: No, Your Honor.

11:38:00 15 THE COURT: All right. Let's call your next

11:38:01 16 witness, please.

11:38:01 17 MR. MANGAN: Your Honor, the government calls Arthur

11:38:03 18 Gau.

11:38:04 19 THE COURT: Very well. We'll break shortly after

11:38:13 20 noon.

11:38:41 21 It may be noon, Mr. Mangan, that we break.

11:38:48 22 Sir, we are going to put you on the witness stand over

11:38:51 23 here.

11:38:54 24 If you'd be willing to pause and stop where you are, sir.

11:38:57 25 Raise your right hand for the oath to tell the truth.

JAMES - RECROSS (Cors)

52

11:38:57 1 THE WITNESS: Yes.

11:38:58 2 THE COURT: Do you solemnly swear or affirm that

11:39:01 3 your testimony today will be the truth, subject to the penalty

11:39:04 4 of perjury?

11:39:05 5 THE WITNESS: Yes.

11:39:06 6 **ARTHUR GAU, PLAINTIFF WITNESS, SWORN**

11:39:06 7 THE COURT: Very well. You may be seated.

11:39:09 8 THE WITNESS: Thank you.

11:39:10 9 THE COURT: Sit in the chair and get acclimated.

11:39:13 10 Sometimes the chair tips back. I'm going to want you in front

11:39:16 11 of the microphone. It's a very expensive federal one.

11:39:23 12 THE WITNESS: Can I take this --

11:39:28 13 THE COURT: Any of the exhibits may come up on your

11:39:31 14 screen, sir. Understood some of the exhibits may come up on

11:39:38 15 your screen.

11:39:41 16 THE WITNESS: The computer screen.

11:39:51 17 THE COURT: Okay. When the time comes, we may tell

11:39:54 18 you to look at the screen, okay?

11:39:55 19 THE WITNESS: Okay. I'm ready.

11:39:57 20 THE COURT: He's ready.

11:39:58 21 MR. MANGAN: Thank you, Your Honor. If it helps

11:40:00 22 Your Honor, may the witness take off his mask?

11:40:02 23 THE COURT: Yes, if you want to take off your mask.

11:40:05 24 THE WITNESS: Yes.

11:40:05 25 THE COURT: You are fully surrounded by Plexiglas.

11:40:11 1 You may proceed, Counsel.

11:40:12 2 The lawyer for the government will ask you some questions

11:40:15 3 at this time.

11:40:17 4 **DIRECT EXAMINATION**

11:40:18 5 BY MR. MANGAN:

11:40:19 6 Q. Good morning, sir. I'm Tim Mangan on behalf of the

11:40:22 7 United States.

11:40:22 8 Can you state your full name for the record, please?

11:40:25 9 A. My full name is Arthur Ching Fu Gau.

11:40:31 10 Q. And how do you spell your last name?

11:40:33 11 A. My last name spells G-A-U.

11:40:38 12 Q. All right. Mr. Gau, where were you born and raised?

11:40:42 13 A. I was born in Taipei, Taiwan.

11:40:47 14 Q. All right. And what languages do you speak?

11:40:50 15 A. I spoke English mostly, and also Chinese, Mandarin.

11:41:01 16 Q. All right. Mr. Gau, were you originally raised in

11:41:04 17 Taiwan?

11:41:04 18 A. Yes.

11:41:10 19 Q. Okay. At what point did you move to the United States?

11:41:12 20 A. I came to United States for graduate study in 1978.

11:41:24 21 Q. All right. And have you become a United States citizen?

11:41:26 22 A. Yes. I became United States citizen 1992, February

11:41:31 23 25th.

11:41:33 24 Q. All right. I'd like to ask you about your education.

11:41:38 25 Did you receive a degree in Taiwan?

GAU - DIRECT (Mangan)

54

11:41:40 1 **A.** Yes. I receive bachelor degree in mechanical
11:41:48 2 engineering from National Taiwan University in 1975.

11:41:56 3 **Q.** All right. I believe you said you came to the United
11:41:59 4 States to pursue a master's degree?

11:42:02 5 **A.** Yes. I obtain a master degree from University of New
11:42:11 6 York in Buffalo in 1979.

11:42:15 7 **Q.** And what was that master's in? What did you study?

11:42:20 8 **A.** That master degree was in mechanical engineering.

11:42:23 9 **Q.** Okay. Did you pursue any additional master's degrees?

11:42:28 10 **A.** Yes. After getting a bachelor degree, I transfer to
11:42:34 11 Purdue University in West Lafayette, Indiana.

11:42:41 12 **Q.** Did you obtain a degree from Purdue?

11:42:44 13 **A.** I obtain a master degree in industrial engineering and
11:42:49 14 also Ph.D. degree in aeronautics and astronautics in 1984.

11:42:58 15 **Q.** And the degree in aeronautics and astronautics, that was
11:43:04 16 a Ph.D.?

11:43:05 17 **A.** That's a Ph.D., yes.

11:43:07 18 **Q.** After that degree, did you begin to teach engineering?

11:43:09 19 **A.** Yes.

11:43:10 20 **Q.** Where --

11:43:11 21 **A.** I obtain teaching job at University of Cincinnati
11:43:18 22 starting in 1995 to 1988. Was teaching assistant professor
11:43:27 23 in aerospace engineering department.

11:43:31 24 **Q.** All right. After your teaching career at the University
11:43:35 25 of Cincinnati, did you pursue an engineering job with a

GAU - DIRECT (Mangan)

55

11:43:38 1 company?

11:43:39 2 **A.** Yes. After three years of teaching, I obtain job at

11:43:51 3 General Electric, Allison Gas Turbine, starting in 1988 to

11:43:57 4 1996 for eight years.

11:44:00 5 **Q.** Was that -- is that Allison Gas --

11:44:04 6 **A.** Allison Gas Turbine --

11:44:06 7 **Q.** All right.

11:44:06 8 **A.** -- Company at Indianapolis, Indiana. It's a division

11:44:13 9 of General Motors Corporation.

11:44:19 10 **Q.** Okay. At some point did you move to Arizona?

11:44:21 11 **A.** I moved to Arizona in 1996 because the job change. I

11:44:29 12 obtain a position in AlliedSignal at that time, in Phoenix.

11:44:38 13 **Q.** And how long did you work for AlliedSignal?

11:44:40 14 **A.** AlliedSignal later merged with Honeywell in 1999. And

11:44:47 15 I work in the same company that's Honeywell for 25 years.

11:44:55 16 **Q.** All right. So you went from working for Allied to

11:45:02 17 working for Honeywell?

11:45:04 18 **A.** Yes. I worked for AlliedSignal in Sky Harbor division

11:45:09 19 for two years. Then I transfer to Tempe division. That's

11:45:16 20 the aerospace division, but it's still same company.

11:45:21 21 Starting 1999, AlliedSignal become Honeywell. It's both

11:45:30 22 company combined. They was merged into Honeywell.

11:45:33 23 **Q.** Is Honeywell involved in the aviation industry?

11:45:36 24 **A.** Yes, in making component and subsystems for aerospace

11:45:44 25 aircraft and the APU. That's a power auxiliary unit.

GAU - DIRECT (Mangan)

56

11:45:52 1 **Q.** All right. While you worked at Honeywell, did you
11:45:54 2 receive training about protecting the company's trade secrets?
11:45:58 3 **A.** Yes, I receive security training about proprietary
11:46:06 4 material and also expert control -- export control
11:46:12 5 classified material.

11:46:14 6 **Q.** Can you explain what export controlled material is?
11:46:17 7 **A.** Yes. Export control, the material and proprietary
11:46:24 8 information spec should not be allowed export to foreign
11:46:29 9 countries without a license.

11:46:32 10 **Q.** All right. And did you receive training at Honeywell
11:46:36 11 about export controls?

11:46:38 12 **A.** Yes. I receive training and that some material that
11:46:46 13 are export controlled expect, software material.

11:46:53 14 **Q.** Okay. While you were at Honeywell, did you take a trip
11:46:59 15 to China in 2017?

11:47:02 16 **A.** I'm sorry. I did not catch your question. Could you
11:47:06 17 repeat your same question?

11:47:10 18 **Q.** Sure.

11:47:10 19 **A.** A little bit louder.

11:47:12 20 **Q.** While you were at Honeywell, did you take a trip to China
11:47:15 21 in 2017?

11:47:17 22 **A.** Yes, I understand your question. From 1997 to 2003, I
11:47:26 23 take three trips to China.

11:47:30 24 **Q.** Mr. Gau, we don't need to go back. I'll go back to the
11:47:33 25 history. I just wanted to ask, in 2017 did you take a trip?

GAU - DIRECT (Mangan)

57

11:47:37 1 **A.** Oh, yes, in 2017 --

11:47:40 2 **Q.** Okay.

11:47:40 3 **A.** -- I took a trip to visit Nanjing.

11:47:44 4 **Q.** Did you give a presentation during that trip?

11:47:46 5 **A.** Oh, yes. Yes, I made a presentation.

11:47:51 6 **Q.** And before that trip, did you send any materials over to

11:47:55 7 a person in China?

11:47:56 8 **A.** Yes, I send in a email. I made a mistake, send in an

11:48:04 9 email for a PowerPoint presentation. That's for

11:48:08 10 presentation in Nanjing.

11:48:10 11 **Q.** Did those materials --

11:48:11 12 **A.** In 2017.

11:48:14 13 **Q.** Did those materials include export controlled materials?

11:48:17 14 **A.** Some of material, they relate to proprietary material.

11:48:25 15 It's starting louder, engine starting louder. And also

11:48:31 16 there are 14 slides regarding this entry control and

11:48:37 17 protection shutdown logic. And those are to company as part

11:48:43 18 of my own work, but it is proprietary, protected.

11:48:47 19 **Q.** Okay. What I wanted to ask was, did any of the materials

11:48:51 20 in the presentation include export controlled materials?

11:48:55 21 **A.** Yes.

11:48:56 22 **Q.** Okay. And at some point was your work at Honeywell

11:49:01 23 terminated?

11:49:02 24 **A.** Yes. After investigation by agent, three months later

11:49:12 25 I was terminated.

GAU - DIRECT (Mangan)

58

11:49:14 1 Q. In what year?

11:49:15 2 A. At work.

11:49:17 3 Q. What year were you terminated by Honeywell?

11:49:19 4 A. 2019, January 10th. That's my last day.

11:49:25 5 Q. Were you charged with a crime for exporting those

11:49:29 6 materials?

11:49:29 7 A. Yes. And I plead guilty for it. And assume the full

11:49:38 8 responsibility for this exporting without a license.

11:49:45 9 Q. All right. Let me ask you about your trips to China.

11:49:52 10 MR. MANGAN: Your Honor, if I could show the witness

11:49:54 11 Exhibit 83 on the screen, please.

11:49:56 12 THE COURT: Yes.

11:50:00 13 BY MR. MANGAN:

11:50:00 14 Q. Do you see on the screen there, do you see an image?

11:50:04 15 A. Yes. I got it. I see it on screen.

11:50:08 16 Q. Okay. Do you recognize that person?

11:50:09 17 A. Yes.

11:50:12 18 Q. And have you met him?

11:50:13 19 A. Yes.

11:50:15 20 Q. And where does he work?

11:50:18 21 A. I met Professor Gao 1997 first time at the National

11:50:28 22 University. This is Nanjing University of Aeronautics and

11:50:38 23 Astronautics.

11:50:38 24 Q. All right. And was he someone you met with during your

11:50:40 25 various trips?

GAU - DIRECT (Mangan)

59

11:50:41 1 A. Sorry. I did not hear --

11:50:45 2 Q. Did you meet with him --

11:50:47 3 A. -- correctly.

11:50:48 4 Q. Did you meet with Professor Gao during some of your

11:50:52 5 trips?

11:50:52 6 A. Yes.

11:50:53 7 MR. MANGAN: Your Honor, we'd move to admit Exhibit

11:50:56 8 83.

11:50:57 9 MR. MIEDEL: No objection.

11:50:58 10 THE COURT: It's admitted.

11:51:00 11 (Government Exhibit 83 was received in evidence.)

11:51:00 12 MR. MANGAN: If we may publish, Your Honor.

11:51:01 13 THE COURT: You can show it to the jury.

11:51:07 14 THE WITNESS: Can you repeat same question again?

11:51:09 15 BY MR. MANGAN:

11:51:09 16 Q. Okay. I haven't asked one. Just one moment.

11:51:13 17 Mr. Gau, can you once again say the name of this

11:51:19 18 individual? What is the name of the individual on the screen?

11:51:23 19 A. The photograph?

11:51:25 20 Q. Yes.

11:51:26 21 A. Is Gao, last name's G-A-O, spell it's G-A-O, and first

11:51:33 22 name is Z-H-E-N -- N, like "Nancy" -- G. It's a Professor

11:51:43 23 Gao Zheng.

11:51:46 24 MR. MANGAN: Your Honor, I'd ask if we can show the

11:51:48 25 witness Exhibit 84, please.

GAU - DIRECT (Mangan)

60

11:51:50 1 THE COURT: Yes.

11:51:53 2 BY MR. MANGAN:

11:51:53 3 Q. Do you recognize --

11:51:54 4 A. Yes, I'm there.

11:51:55 5 Q. Okay. Do you recognize what that is?

11:51:57 6 A. Yes. It's a business card from Professor Gao Zheng

11:52:07 7 given to me in 1997.

11:52:11 8 MR. MANGAN: Okay. Your Honor, we'd move to admit

11:52:13 9 Exhibit 84.

11:52:15 10 MR. MIEDEL: No objection.

11:52:15 11 THE COURT: It's admitted.

11:52:17 12 (Government Exhibit 84 was received in evidence.)

11:52:17 13 THE WITNESS: Yes. It's a business card.

11:52:21 14 BY MR. MANGAN:

11:52:21 15 Q. All right. One moment.

11:52:22 16 MR. MANGAN: May we publish, Your Honor?

11:52:23 17 THE COURT: Yes.

11:52:24 18 BY MR. MANGAN:

11:52:25 19 Q. We're just going to take a moment while they show it to

11:52:28 20 the jury, okay?

11:52:29 21 A. Okay.

11:52:31 22 Q. Now, looking at the screen, Exhibit 84, is this the

11:52:34 23 business card you were referring to, that you received from

11:52:40 24 the professor?

11:52:41 25 A. Yes, it's a business card from Professor Gao.

GAU - DIRECT (Mangan)

61

11:52:50 1 **Q.** And if we look at the business card, what is the name of
11:52:55 2 the university where he works?
11:52:56 3 **A.** It's Nanjing University of Aeronautics and
11:53:02 4 Astronautics.
11:53:02 5 **Q.** And what are his titles on the business card?
11:53:05 6 **A.** Title's professor and director, is a Rotorcraft, the
11:53:13 7 lab, is a Lab of Rotorcraft.
11:53:17 8 **Q.** At the Rotorcraft Lab?
11:53:19 9 **A.** And aeromechanics.
11:53:21 10 **Q.** Okay. And does it say, "Chairman of Chinese Helicopter
11:53:25 11 Society"?
11:53:25 12 **A.** Chairman of Chinese Helicopter Society.
11:53:30 13 **Q.** All right. I think you said it. When did you first meet
11:53:37 14 Professor Gao?
11:53:39 15 **A.** Pardon?
11:53:40 16 **Q.** When did you first meet Professor Gao?
11:53:40 17 **A.** 1997.
11:53:42 18 **Q.** All right.
11:53:42 19 **A.** The first time.
11:53:44 20 **Q.** Was that during a trip to Nanjing?
11:53:47 21 **A.** That's during a trip to NUAA, yes.
11:53:51 22 **Q.** All right. Did you go back to China in 2000?
11:53:57 23 **A.** 2000, yes.
11:53:58 24 **Q.** All right. And did you see Professor Gao during that
11:54:03 25 visit?

GAU - DIRECT (Mangan)

62

11:54:03 1 A. Yes. Visit him for four days.

11:54:07 2 Q. Was there a -- did you give a presentation during that

11:54:09 3 visit?

11:54:10 4 A. Yes, I gave a presentation to students in the seminar,

11:54:18 5 university seminar.

11:54:19 6 Q. Did you receive any payment for that trip?

11:54:21 7 A. Could you repeat the same question? I didn't hear

11:54:29 8 about -- do I receive?

11:54:31 9 Q. Sure. Did you receive a payment of money for the trip?

11:54:34 10 A. Receive?

11:54:38 11 Q. Were you paid money for the trip?

11:54:40 12 A. Oh, pay. They pay for the airfare way.

11:54:45 13 Q. Okay. Who paid for the airfare?

11:54:47 14 A. This is a foreign affair office.

11:54:50 15 Q. The foreign affair office?

11:54:52 16 A. Of NUAA.

11:54:53 17 Q. Okay. Have you ever met an individual named Zha Rong?

11:55:02 18 A. Yes. There were three people working in the foreign

11:55:05 19 affair office, and he is one of the person. I barely know

11:55:12 20 him in 2000, but I met him first time in the year of 2000.

11:55:16 21 Q. Okay. You met him in 2000.

11:55:19 22 MR. MANGAN: Your Honor, I'd ask if we could show

11:55:22 23 the witness Exhibit 80.

11:55:24 24 THE COURT: Yes.

11:55:27 25 BY MR. MANGAN:

11:55:27 1 Q. If you could take a look at your screen, sir. Do you
11:55:31 2 recognize that business card?

11:55:33 3 A. Yes. That's a business card given to me. I think it's
11:55:43 4 2003 when he give it to me. But it's Zha, the last name
11:55:48 5 spells Z-H-A, and first name Rong, R-O-N-G.

11:55:58 6 MR. MANGAN: Your Honor, may we --

11:56:00 7 THE WITNESS: He is receptionist working in a
11:56:03 8 Foreign Affairs Office at NUAA.

11:56:08 9 MR. MANGAN: Your Honor, we'd move to admit Exhibit
11:56:10 10 80.

11:56:12 11 MR. MIEDEL: No objection.

11:56:12 12 THE COURT: Admitted.

11:56:13 13 (Government Exhibit 80 was received in evidence.)

11:56:13 14 MR. MANGAN: May we publish?

11:56:14 15 THE COURT: Yes, you may show it to the jury.

11:56:23 16 BY MR. MANGAN:

11:56:23 17 Q. Mr. Gau, did you receive this business card from a person
11:56:26 18 called Zha Rong?

11:56:27 19 A. Zha Rong, yes.

11:56:29 20 Q. In looking at the business card, where does it say he
11:56:33 21 works?

11:56:33 22 A. He work at Nanjing University of Aeronautics and
11:56:41 23 Astronautics, Foreign Affairs Office.

11:56:45 24 Q. Did you -- when you talked with him, did you call him Zha
11:56:51 25 Rong or did you call him something else?

GAU - DIRECT (Mangan)

64

11:56:53 1 A. We call him Zha Rong and also the nickname, Little Zha.

11:57:01 2 Q. Did you ever call him by his initials, Z.R.?

11:57:06 3 A. Yes, both, Mr. Zha or Little Zha.

11:57:11 4 Q. All right. During your trip in 2000, what did Mr. Zha

11:57:19 5 Rong do?

11:57:20 6 A. Sorry. I did not catch question. Was Mr. Zha Rong --

11:57:27 7 Q. What did Zha Rong do during your trip to China in 2000?

11:57:32 8 A. During the trip, he's a receptionist, one of three

11:57:37 9 working in office. It shows how to get around in a city,

11:57:44 10 like where to go to get a meal, where to go for sight-

11:57:50 11 seeing, where to get the exchange, the dollar exchange.

11:58:01 12 Q. All right. And did his office pay for your airfare?

11:58:03 13 A. I cannot remember exactly, but it's very likely, yes.

11:58:09 14 Q. All right. I want to ask about your next trip in 2003.

11:58:15 15 A. Sure.

11:58:16 16 Q. Did you return to China in 2003?

11:58:21 17 A. In 2003 I was doing this Three Gorges cruise along the

11:58:32 18 Zen River, because I cannot book the ticket from United

11:58:37 19 States. So I went through -- when I went through the China,

11:58:44 20 the Foreign Affairs Office sent Little Rong. That's the Zha

11:58:52 21 Rong. Mr. Zha come to Beijing airport to receive us.

11:58:56 22 That's me and my mother on the trip.

11:59:00 23 I was setting up a trip before this Three Gorges Dam

11:59:09 24 was complete. It's about to complete at that time, and

11:59:12 25 start to blacken the water. So once the water rise, the

11:59:18 1 scenery will be all change.

11:59:20 2 Q. Okay.

11:59:21 3 THE COURT: I'm going to need to break at an
11:59:23 4 appropriate moment. If you've got a couple more, go ahead.

11:59:27 5 MR. MANGAN: I will ask one more, and maybe that's
11:59:29 6 the right time, Your Honor.

11:59:30 7 THE COURT: Very well.

11:59:31 8 BY MR. MANGAN:

11:59:31 9 Q. During the 2003 trip, did you see Professor Gao and Zha
11:59:36 10 Rong?

11:59:36 11 A. Along of this cruising trip, he was accompany me
11:59:47 12 through all the way.

11:59:48 13 Q. Was it Mr. Zha Rong who accompanied you?

11:59:51 14 A. Yes, for the sight-seeing trip.

11:59:54 15 Q. And the company --

11:59:55 16 A. And then on the return trip, stop at NUAA and met with
12:00:01 17 Professor Gao for one day.

12:00:05 18 Q. All right. Last question before we break. Who paid for
12:00:08 19 the sight-seeing trip?

12:00:09 20 A. For the sight-seeing, the University of Nanjing
12:00:19 21 Aeronautic -- this Foreign Affairs Office. And I took care
12:00:27 22 of starting from the Beijing airport and all the way stop in
12:00:34 23 Nanjing and then back to Beijing again. And then I was
12:00:40 24 taking a flight back from Beijing to U.S.A.

12:00:46 25 MR. MANGAN: Your Honor, I think this would be a

GAU - DIRECT (Mangan)

66

12:00:48 1 good breaking point.

12:00:49 2 THE COURT: Very well. We are going to take a lunch

12:00:51 3 break, stop for a little while, okay?

12:00:53 4 THE WITNESS: A lunch break now. Thank you.

12:00:55 5 THE COURT: Members of the jury, we're going to take

12:00:57 6 our lunch break. High noon. We're going to break until 1:30.

12:01:02 7 During the break, take a break. Don't discuss the case among

12:01:07 8 yourselves or with anyone else. No independent research.

12:01:09 9 Continue to keep an open mind.

12:01:12 10 Out of respect for you, we'll rise as you leave.

12:01:16 11 THE COURTROOM DEPUTY: All rise for the jury.

12:01:18 12 (Jury out at 12:01 p.m.)

12:01:50 13 THE COURT: The jury's left the room. The door is

12:01:53 14 closed. The witness can step down and go to lunch.

12:02:00 15 Will the government see to his care and admonish him

12:02:04 16 about his testimony, not to discuss it?

12:02:09 17 MR. MANGAN: Yes, Your Honor. He has counsel here

12:02:10 18 as well.

12:02:12 19 THE COURT: Magnificent. Where is counsel?

12:02:16 20 MS. CISNEROS: Right here, Your Honor.

12:02:18 21 THE COURT: Welcome.

12:02:22 22 MS. CISNEROS: Thank you.

12:02:23 23 THE COURT: 1:30.

12:02:24 24 Okay. Please be seated.

12:02:32 25 Is there something that I need to address before the

12:02:35 1 lunch break from the government's perspective?

12:02:39 2 MR. MANGAN: After this witness, Your Honor, it

12:02:40 3 would become ripe to discuss the issue related to the

12:02:44 4 presentation of that transcript that we raised with the Court.

12:02:48 5 THE COURT: And should we resolve that now?

12:02:51 6 MR. MANGAN: It would certainly help our planning.

12:02:54 7 THE COURT: Very well.

12:02:55 8 MR. MANGAN: I do expect this witness will take a

12:02:57 9 little bit of time. He's currently on the stand.

12:03:00 10 THE COURT: Well, let's address it now.

12:03:04 11 Let me make a statement. I've read the government's

12:03:08 12 memo, motion.

12:03:13 13 For purposes of the record, yesterday afternoon the

12:03:16 14 government raised an issue regarding the presentation of

12:03:19 15 previously admitted exhibits. Specifically, the government

12:03:24 16 admitted into evidence the transcripts of certain recorded

12:03:29 17 conversations, but the government did not publish the exhibits

12:03:34 18 to the jury at the time of their admission.

12:03:37 19 The government now seeks to have the transcripts read in

12:03:42 20 open court. Yesterday, the government proposed doing so

12:03:46 21 either by having it read for the jurors by various non-

12:03:50 22 witness individuals or, alternatively, the government proposed

12:03:57 23 having a superfluous witness take the stand merely to read the

12:04:01 24 transcripts.

12:04:02 25 Defendant objected to the government's proposal, stating

GAU - DIRECT (Mangan)

68

12:04:05 1 that the manner in which the government intends to present the
12:04:09 2 evidence is improper. Moreover, defendant noted that the
12:04:13 3 transcripts are already in evidence, can be referenced by
12:04:18 4 counsel during closing arguments, and will be provided to the
12:04:22 5 jurors during deliberations. Therefore, defendant maintains
12:04:28 6 that the government's intended reading of the transcript is
12:04:31 7 unnecessary and improper.

12:04:33 8 I indicated yesterday in open court that I was
12:04:37 9 disinclined to allow the government to revisit the admitted
12:04:42 10 transcripts in the manner indicated but that I would give it
12:04:46 11 additional thought. After we recessed for the day, I gave it
12:04:51 12 more thought and determined that the defense's objection was
12:04:55 13 well taken. I had my staff email the lawyers, the parties to
12:05:00 14 that effect yesterday at 6:30 p.m.

12:05:05 15 At 7:55 p.m. the government filed a motion to publish
12:05:09 16 exhibits. In its motion the government proposes as an
12:05:13 17 alternative means of presenting the evidence that it could
12:05:18 18 recall Agent Hull to merely read the transcript but not
12:05:22 19 otherwise testify to anything.

12:05:27 20 The government also cites Sixth Circuit case law *U.S.*
12:05:31 21 *versus Tragas*, T-R-A-G-A-S, in support of its proposal. As an
12:05:37 22 initial matter, the government's cited case law stands for the
12:05:42 23 proposition that a witness can read a transcript that's
12:05:45 24 already admitted into evidence. But that's not the issue
12:05:49 25 here. The government -- or the Court is well aware that

GAU - DIRECT (Mangan)

69

12:05:53 1 reading the contents of an admitted exhibit is generally
12:05:59 2 appropriate, and I have allowed the government to do just that
12:06:03 3 with a number of communications and numerous witnesses. But
12:06:08 4 the issue here is not whether the witness can read an admitted
12:06:13 5 exhibit but rather the issue is the manner in which the
12:06:16 6 government intends to do so.

12:06:19 7 And the case law cited by the government does not address
12:06:22 8 that issue. Notably, the *Tragas* case does say that a
12:06:28 9 theatrical performance would generally be inappropriate.

12:06:32 10 Here, the Court finds that having the transcript read by
12:06:36 11 non-witnesses is effectively the same as having it acted out
12:06:40 12 for the jury. It's not an appropriate means of presenting the
12:06:45 13 evidence.

12:06:46 14 Moreover, as to the notion that the government would
12:06:49 15 simply put on an irrelevant witness to read the transcript,
12:06:53 16 this too is appropriate. Federal Rule of Evidence 602 states
12:06:58 17 that, quote, "A witness may testify to a matter only if the
12:07:02 18 evidence is introduced sufficient to support a finding that
12:07:11 19 the witness has personal knowledge of the matter," end quote.

12:07:14 20 Simply having an agent with no connection to the case
12:07:17 21 take the stand for the purpose of reading a transcript to the
12:07:20 22 jury, no less a transcript that the jury can read for
12:07:23 23 themselves during deliberations, is not appropriate. The
12:07:31 24 circumstances would be different, for instance, if the
12:07:34 25 government were merely proposing to read prior statements of

12:07:38 1 an unavailable witness who was previously subject to
12:07:42 2 cross-examination.

12:07:46 3 But here, there are no such circumstances that would
12:07:48 4 justify the government's intended presentation of the
12:07:52 5 transcript. But here, what we have is the government
12:07:56 6 admitting an exhibit, not publishing it through the relevant
12:08:01 7 witness, and now seeking to go back and present the evidence
12:08:05 8 using nontraditional methods simply for the sake of reading an
12:08:09 9 exhibit that the jury can easily read for itself.

12:08:14 10 Additionally, the government now proposes recalling Agent
12:08:21 11 Hull. The Court has broad discretion with regard to allowing
12:08:24 12 a party to recall witnesses, and that discretion largely
12:08:27 13 arises from the Court's authority to exercise reasonable
12:08:31 14 control over the proceedings and the manner and mode of
12:08:37 15 examining witnesses.

12:08:38 16 In considering whether to allow a party to recall a
12:08:41 17 witness, the Court may consider a number of factors, including
12:08:46 18 the parties' explanation for failing to introduce the evidence
12:08:50 19 earlier, the admissibility and relevance of the evidence, and
12:08:55 20 prejudice to the opposing party.

12:08:57 21 Here, admissibility and relevance are not in question,
12:09:06 22 and indeed, the exhibits have already been admitted. So my
12:09:08 23 focus, driven by the case law, is really on why the government
12:09:12 24 failed to just have Agent Hull read the transcript at the time
12:09:15 25 of his testimony. And I'm also curious as to why the

12:09:20 1 government believes that having the exhibit in evidence, being
12:09:24 2 able to rely on it and read from it in closing arguments, and
12:09:28 3 having the jury able to read it during deliberations is not
12:09:33 4 adequate.

12:09:34 5 Can the government speak to my inquiry?

12:09:38 6 MR. MANGAN: Your Honor, I think really our -- first
12:09:44 7 of all, we intended to present it simply in the mode that we
12:09:49 8 had proposed yesterday. The transcript is quite lengthy, and
12:09:54 9 that's why simply submitting it at the conclusion of the
12:09:58 10 proceedings without actually walking through it we don't think
12:10:04 11 would be as helpful in terms of the jury understanding the
12:10:07 12 evidence. We think there is some value to reading it to them.

12:10:11 13 We understand the Court's ruling and reluctance. If
12:10:16 14 that's how the Court is ruling, then we will just proceed
12:10:20 15 accordingly.

12:10:21 16 THE COURT: Very well. Does the defense need to be
12:10:24 17 heard before the Court acts?

12:10:27 18 MR. MIEDEL: I don't think so, Your Honor.

12:10:28 19 THE COURT: Very well. The government has conducted
12:10:34 20 verbatim readings as to a number of exhibits and could have
12:10:37 21 done so to the transcript at issue. The government did not do
12:10:42 22 so. My ruling as indicated in the email my chambers sent out
12:10:47 23 last night still stands.

12:10:48 24 If the government has a remaining witness with direct
12:10:51 25 knowledge of the recorded conversation, it can still proceed

GAU - DIRECT (Mangan)

72

12:10:55 1 to review the evidence through that witness. Otherwise -- or
12:11:02 2 present the evidence through that witness. Otherwise, the
12:11:05 3 Court declines to allow a simulated reading by non-witnesses
12:11:08 4 or irrelevant witnesses, and the Court finds no basis to
12:11:13 5 reopen the testimony of Agent Hull for no purpose other than
12:11:19 6 to read a document that the jury can read for itself.

12:11:23 7 That's the Court's ruling. We will now recess until
12:11:27 8 1:30.

12:11:28 9 On the lunch break, is there anything else that requires
12:11:31 10 my attention before we break for lunch, from the government?

12:11:33 11 MR. MANGAN: No, Your Honor.

12:11:34 12 THE COURT: From the defense?

12:11:36 13 MR. MIEDEL: No, Your Honor.

12:11:36 14 THE COURT: We are in recess till 1:30.

12:11:39 15 THE COURTROOM DEPUTY: All rise. The court's in
12:11:41 16 recess until 1:30.

12:11:43 17 (Lunch recess at 12:11 p.m. until 1:35 p.m.)

01:35:39 18 THE COURT: We're back in the courtroom. Are we
01:35:42 19 ready to get the jury from the government's perspective?

01:35:45 20 MR. MANGAN: Yes, Your Honor.

01:35:45 21 THE COURT: And the defense?

01:35:47 22 MR. MIEDEL: Yes, Your Honor.

01:35:48 23 THE COURT: Very well. Let's call for the jury,
01:35:54 24 please.

01:37:14 25 THE COURTROOM DEPUTY: All rise for the jury.

01:37:15 1 (Jury in at 1:37 p.m.)

01:37:48 2 THE COURT: You may all be seated. Thank you.

01:37:52 3 The jury has arrived after a lunch break. On behalf of

01:38:01 4 the Court and the community and the parties, thank you for

01:38:04 5 your close attention. And thank you for continuing to keep an

01:38:08 6 open mind.

01:38:10 7 We'll continue to hear the testimony of this witness.

01:38:12 8 Mr. McKenzie, you may proceed.

01:38:14 9 MR. MANGAN: Thank you, Your Honor.

01:38:16 10 THE COURT: Very well.

01:38:17 11 BY MR. MANGAN:

01:38:17 12 Q. Good afternoon, Mr. Gau.

01:38:20 13 A. Hi.

01:38:21 14 Q. I want to talk to you a little bit more about Zha Rong.

01:38:27 15 A. Sure.

01:38:27 16 Q. All right. At some point did you begin emailing with

01:38:31 17 him?

01:38:32 18 A. Yes.

01:38:34 19 Q. Can you take a look at -- in the binder there is Exhibit

01:38:37 20 88a and 88b.

01:38:46 21 MR. MANGAN: And, Your Honor, if we could ask to put

01:38:49 22 them on the screen as well.

01:38:50 23 THE COURT: Very well.

01:38:54 24 THE WITNESS: Yes, I'm there.

01:38:55 25 BY MR. MANGAN:

GAU - DIRECT (Mangan)

74

01:38:55 1 Q. Do you see Exhibit 88a?

01:38:57 2 A. Yes.

01:38:59 3 Q. And what are these?

01:39:00 4 A. This a email from jastburton. It is from Zha, Z-H-A,

01:39:14 5 the Little Zha.

01:39:16 6 Q. Little Zha?

01:39:16 7 A. Yes.

01:39:16 8 Q. All right. And was that sent to your email address?

01:39:19 9 A. Yes, is sent to my email address, arthur.gau@juno.com.

01:39:28 10 Q. All right. And for 88a, are these the emails in the

01:39:32 11 original Chinese characters?

01:39:34 12 A. Yes.

01:39:35 13 Q. Can you --

01:39:37 14 A. This is characters, yes.

01:39:38 15 Q. Can you look at the exhibits in 88b?

01:39:51 16 A. Yes, I'm there.

01:39:53 17 Q. Are those the translations of those emails?

01:39:56 18 A. Yes. It's English version.

01:40:00 19 Q. Thank you.

01:40:01 20 MR. MANGAN: Your Honor, we'd move to admit Exhibits

01:40:04 21 88a and b.

01:40:06 22 MR. MIEDEL: No objection.

01:40:06 23 THE COURT: Admitted.

01:40:06 24 (Government Exhibits 88a and 88b were received in

01:40:09 25 evidence.)

GAU - DIRECT (Mangan)

75

01:40:09 1 BY MR. MANGAN:

01:40:09 2 Q. We're going to stay on 88a, okay?

01:40:14 3 A. Okay.

01:40:17 4 MR. MANGAN: If we could publish 88 -- I'm sorry,

01:40:20 5 88b. My apologies. Let's stick with the English version. If

01:40:25 6 we could publish 88b to the jury, Your Honor?

01:40:28 7 THE COURT: Yes.

01:40:29 8 BY MR. MANGAN:

01:40:29 9 Q. Let me start with page 1, and you can either look at it

01:40:32 10 on the binder or you can look on your screen, okay?

01:40:36 11 A. Okay.

01:40:36 12 Q. Mr. Gau, is this the email you just referenced from

01:40:40 13 Little Zha?

01:40:41 14 A. Yes, is from Little Zha.

01:40:44 15 Q. And is the email address that was used called

01:40:50 16 jastburton@gmail?

01:40:54 17 A. Yes, that's correct.

01:40:56 18 Q. And what is the date of the email?

01:40:58 19 A. This January 17, 2014.

01:41:04 20 Q. All right. Let me read this for you.

01:41:09 21 "Mr. Gau. My apology. The message that I sent on the

01:41:12 22 New Year's Day was rejected. I reckon that you must not have

01:41:16 23 received it. This is my other email address.

01:41:18 24 "We indeed have not seen each other for a long time.

01:41:22 25 Time flies. It has been 11 year. I heard from Teacher Gao

GAU - DIRECT (Mangan)

76

01:41:28 1 that you have a son recently. Congratulations. I wish you
01:41:31 2 and your family a Happy New Year and have good health. I also
01:41:35 3 hope that you will come back to China to visit next year."

01:41:39 4 Do you see that, Mr. Gau?

01:41:41 5 **A.** Yes, I saw it.

01:41:42 6 **Q.** And did you receive this from Zha Rong?

01:41:49 7 **A.** Yes, the Little Zha, Z-H-R -- Z-H-A.

01:41:56 8 **Q.** Had you not seen each other in the last 11 years?

01:41:58 9 **A.** No connection, no email in between, yeah, 2003 to this
01:42:07 10 email.

01:42:09 11 **Q.** All right. If we could turn to the next page.

01:42:14 12 Did you respond to him?

01:42:16 13 **A.** Yes.

01:42:19 14 **Q.** I'm sorry. On the second page, did he again reach out to
01:42:23 15 you and ask if you were coming back to China?

01:42:26 16 **A.** Yes.

01:42:30 17 **Q.** All right. And is this one dated January 22, 2016?

01:42:38 18 **A.** This dated January 22, 2016.

01:42:44 19 **Q.** All right. Thank you.

01:42:46 20 I'd like to turn to page 3. And it will show up on your
01:42:51 21 screen as well.

01:42:55 22 **A.** I'm there. Thank you.

01:42:57 23 **Q.** Thank you. What is this email?

01:43:01 24 **A.** My email's arthur.gau@juno.com. So this is my respond
01:43:11 25 to Little Zha's email.

GAU - DIRECT (Mangan)

77

01:43:13 1 **Q.** Okay. So this is your response?

01:43:14 2 **A.** Yes.

01:43:15 3 **Q.** And if we could go down towards the bottom.

01:43:22 4 **A.** Yes, I'm there.

01:43:23 5 **Q.** All right. Did you provide him with your WeChat number?

01:43:30 6 **A.** Yes, that's correct. That's my WeChat number.

01:43:33 7 **Q.** And did you also provide him with your WeChat nickname?

01:43:37 8 **A.** Yes, the WeChat handle.

01:43:41 9 **Q.** And we see -- that's your WeChat handle?

01:43:45 10 **A.** Yes.

01:43:46 11 **Q.** All right. Thank you. If we can turn to page 4? At the

01:43:52 12 top.

01:43:54 13 Do you see a response from jastburton?

01:43:59 14 **A.** Yes.

01:44:00 15 **Q.** And I'll read it. "Mr. Gau, I added your WeChat account

01:44:05 16 and sent you a message. However, you haven't responded.

01:44:08 17 Don't you use WeChat often?"

01:44:11 18 Did I read that correctly?

01:44:13 19 **A.** Yes.

01:44:14 20 **Q.** All right. And what is the date of this response?

01:44:17 21 **A.** This is March 2, 2016.

01:44:23 22 **Q.** Okay. Now, did you go back to China in 2016?

01:44:30 23 **A.** Yes, in March 2016. I took a personal trip to visit my

01:44:41 24 music -- musical drama friends at Changzhou. That's in 2016.

01:44:50 25 **Q.** How long were you in China during that trip?

GAU - DIRECT (Mangan)

78

01:44:54 1 **A.** I was in China for five days.

01:44:58 2 **Q.** Did you see Zha Rong during that trip?

01:45:01 3 **A.** Yes. During the transit, when I go from Beijing

01:45:09 4 airport to the -- the city my friend, the musical friend,

01:45:17 5 they reside. And I saw him. I met him in a hotel during

01:45:25 6 this transit, and also on the way back, the last day I met

01:45:32 7 him as well.

01:45:34 8 **Q.** All right. So did you see -- just to clarify, did you

01:45:39 9 see Zha Rong when you first got to China?

01:45:42 10 **A.** Yes, when I got to Beijing airport.

01:45:49 11 **Q.** All right. And then did you also see him on your return

01:45:51 12 trip?

01:45:52 13 **A.** On the return trip, right. During the transit.

01:45:55 14 **Q.** All right. When you first got there and saw Zha Rong,

01:45:58 15 was he with anyone else?

01:46:00 16 **A.** Yes.

01:46:02 17 **Q.** Who?

01:46:02 18 **A.** Mr. Xu, the X-U, was with him.

01:46:09 19 **Q.** Is that how his name is spelled?

01:46:12 20 **A.** Yes, X-U.

01:46:12 21 **Q.** X-U?

01:46:17 22 **A.** That's how you pronounce Mr. Xu.

01:46:20 23 **Q.** So when you met Zha Rong and Mr. Xu --

01:46:24 24 **A.** Xu, yes.

01:46:26 25 **Q.** -- did you have any meals with them?

GAU - DIRECT (Mangan)

79

01:46:28 1 **A.** For that night, yes, we had a dinner. It was pretty
01:46:36 2 late. We had a dinner.

01:46:38 3 **Q.** All right. Did you also meet with the two of them on
01:46:43 4 your return trip?

01:46:44 5 **A.** On the return trip, yes, we met in, first met in train
01:46:50 6 station and then back to the hotel. And then we had a
01:46:57 7 little cake. This dialect, pastry is cakes of various types
01:47:04 8 of little cake.

01:47:06 9 **Q.** Okay. When you met with Zha Rong and Mr. Xu, did you go
01:47:13 10 to your hotel room with them?

01:47:16 11 **A.** At the return night, that night, yes, very late. They
01:47:24 12 went to my room.

01:47:25 13 **Q.** And --

01:47:26 14 **A.** And gave me \$3,000.

01:47:29 15 **Q.** They gave you \$3,000?

01:47:31 16 **A.** Yes.

01:47:32 17 **Q.** Was that in U.S. cash?

01:47:34 18 **A.** That's in U.S. dollars, yes.

01:47:38 19 **Q.** Did you give a presentation during that visit?

01:47:40 20 **A.** No. I was surprised. That was on my personal trip.

01:47:45 21 **Q.** All right. Did you bring your computer laptop with you?

01:47:49 22 **A.** No, no laptop.

01:47:52 23 **Q.** All right. Were you still working for Honeywell at that
01:47:56 24 time?

01:47:56 25 **A.** Yes, I was still working at Honeywell at that time.

GAU - DIRECT (Mangan)

80

01:48:02 1 **Q.** Did they ask you anything about Honeywell during that

01:48:06 2 visit?

01:48:07 3 **A.** No. I just talk about my career changes. I'm off on

01:48:18 4 the field propulsion and then working on aerospace systems,

01:48:23 5 like air conditioning, air flow system; and they were

01:48:29 6 talking about Taiwan politics, the action going on in Taiwan

01:48:37 7 and their universe.

01:48:41 8 **Q.** You said they gave you cash. Were you expected to come

01:48:46 9 back and give a presentation?

01:48:49 10 **A.** They invited me for this 2017 trip.

01:48:57 11 **Q.** All right.

01:48:57 12 **A.** Back to Nanjing.

01:49:00 13 **Q.** Okay. Did you go back to China in 2017?

01:49:05 14 **A.** Yes, at 2017 October.

01:49:11 15 **Q.** In October?

01:49:12 16 **A.** Yes. I took a trip to visit Nanjing again in 2017,

01:49:21 17 October 12.

01:49:22 18 **Q.** And did you give a presentation as they requested?

01:49:25 19 **A.** Yes, I made a presentation on Friday, late afternoon.

01:49:33 20 **Q.** I want to ask you how you stayed in touch with them

01:49:36 21 before the 2017 trip.

01:49:40 22 **A.** 2017, email, their email and WeChat.

01:49:48 23 **Q.** All right. You used some WeChat?

01:49:52 24 **A.** Yes.

01:49:52 25 **Q.** All right. Can you turn in your book to Exhibit 87a?

GAU - DIRECT (Mangan)

81

01:49:56 1 **A.** 87.

01:50:01 2 **Q.** 87a.

01:50:10 3 **A.** Sorry. I did not -- is that in the beginning of the

01:50:14 4 book?

01:50:15 5 **Q.** It's Number 87a.

01:50:17 6 **A.** Oh, 87. Sorry.

01:50:35 7 I'm there, 87a.

01:50:37 8 **Q.** All right. Do you recognize these messages?

01:50:40 9 **A.** Oh, yes. Yes, I can recognize.

01:50:50 10 **Q.** In green, is that the WeChat handle that you use?

01:50:53 11 **A.** Yes. That was from Little Zha, Z-H-A.

01:51:04 12 **Q.** All right. And are these the messages that you had

01:51:07 13 between you and who you thought was Little Zha?

01:51:11 14 **A.** Yes. And sometime I feel there was switch in point to

01:51:22 15 Mr. Xu, X-U.

01:51:24 16 **Q.** Okay.

01:51:24 17 **A.** Yeah, on WeChat, on the same handle.

01:51:31 18 MR. MANGAN: All right. Your Honor, at this point

01:51:32 19 we'd ask to move to admit Exhibit 87a.

01:51:37 20 MR. MIEDEL: No objection.

01:51:39 21 THE COURT: Admitted.

01:51:42 22 (Government Exhibit 87a was received in evidence.)

01:51:42 23 MR. MANGAN: May we publish?

01:51:45 24 THE COURT: Yes.

01:51:49 25 BY MR. MANGAN:

GAU - DIRECT (Mangan)

82

01:51:50 1 **Q.** Mr. Gau, at the top of this where it has the handle in
01:51:54 2 blue, do you see the name YouJun?
01:51:57 3 **A.** Yes, YouJun, I saw it.
01:52:01 4 **Q.** Y-O-U-J-U-N?
01:52:04 5 **A.** Yes, that's correct, Y-O-U-J-U-N.
01:52:09 6 **Q.** Is that the WeChat handle that you were corresponding
01:52:12 7 with?
01:52:12 8 **A.** Yes.
01:52:12 9 **Q.** Okay. And did these chats start after you met with them
01:52:17 10 in 2016?
01:52:22 11 **A.** Sorry. I did not catch the question exactly.
01:52:26 12 **Q.** Sure. The first message is, "Teacher Gao, how did your
01:52:31 13 dental surgery go? Is everything okay?"
01:52:35 14 Did you have some dental issues?
01:52:37 15 **A.** Oh, yes. I had a dental implant 2016.
01:52:43 16 **Q.** All right. Did you talk to them about that during the
01:52:47 17 2016 trip?
01:52:48 18 **A.** Yes. I was talking about my -- this -- going through
01:52:55 19 this dental implant in the trip 2016.
01:53:02 20 **Q.** All right. And when you started these chats, who did you
01:53:07 21 believe you were talking to?
01:53:08 22 **A.** I'm not clear exactly the switching point. I think at
01:53:16 23 this point talking about the dental implant, I'm sure it's
01:53:23 24 from Mr. Xu, X-U.
01:53:28 25 **Q.** All right. If we can go down to the bottom of the first

GAU - DIRECT (Mangan)

83

01:53:31 1 page.

01:53:33 2 **A.** Yes.

01:53:34 3 **Q.** Do you see a message from you for August 10, 2016?

01:53:41 4 **A.** Yes, I see it.

01:53:44 5 **Q.** And it says, "Hello Mr. Zha. I will have to wait for

01:53:48 6 another month to have the second surgery. Hopefully I will

01:53:50 7 have better luck."

01:53:52 8 Do you see that?

01:53:52 9 **A.** Yes, I see that, at the bottom.

01:53:54 10 **Q.** So at that time did you believe you were chatting with

01:53:58 11 Zha Rong?

01:54:06 12 **A.** I feel like maybe Mr. Xu, X-U. I am not exactly

01:54:13 13 clear --

01:54:14 14 **Q.** Okay.

01:54:15 15 **A.** -- when the switching point happened.

01:54:18 16 **Q.** All right. I'm going to move forward to page 8.

01:54:22 17 MR. MANGAN: If we could show the witness page 8?

01:54:26 18 THE COURT: Yes. He has it in front of him.

01:54:29 19 BY MR. MANGAN:

01:54:29 20 **Q.** I'm sorry. It's at the bottom. And it may be easier on

01:54:34 21 the screen. If that's easier.

01:54:34 22 **A.** Okay, page 8, yes. I'm there.

01:54:36 23 **Q.** At the very, very bottom, do you see a message that

01:54:41 24 starts on November 17, 2016? Where you say, "Would you like

01:54:48 25 to come to Cangzhou with me?"

GAU - DIRECT (Mangan)

84

01:54:53 1 **A.** Cangzhou -- Cangzhou is where my musician friend live.

01:54:59 2 **Q.** All right.

01:54:59 3 **A.** At that time, November 16 of '17, there was concert for

01:55:06 4 my friend, for my musical friend.

01:55:11 5 **Q.** All right. I'd like to turn to the next page to see the

01:55:14 6 response.

01:55:20 7 All right. The response from the WeChat YouJun, does it

01:55:26 8 say, "Did you prepare the materials that I asked you to

01:55:28 9 prepare last time?"

01:55:31 10 Did you see that?

01:55:32 11 **A.** Yes, I saw that on top.

01:55:34 12 **Q.** What materials are they talking about?

01:55:38 13 **A.** I'm not exactly clear what material they talking about.

01:55:51 14 It is any kind of material, but it's not clear to me what

01:55:57 15 kind of material it is.

01:56:00 16 MR. MANGAN: All right. If we could move down the

01:56:01 17 page a little bit.

01:56:04 18 THE WITNESS: Yes.

01:56:07 19 MR. MANGAN: A little further, please.

01:56:07 20 BY MR. MANGAN:

01:56:10 21 **Q.** Do you see where you wrote to them, "I can talk about

01:56:13 22 both specialties"? Do you see that?

01:56:17 23 **A.** Yes. Yes, I see that.

01:56:21 24 **Q.** All right. And then did they respond, "Do you have any

01:56:25 25 materials on hand?"

GAU - DIRECT (Mangan)

85

01:56:27 1 "Because you've made the decision abruptly to come back
01:56:31 2 next week. It's kind of tight."

01:56:33 3 "I will try to make arrangement for the exchange."

01:56:44 4 **A.** Yes, I saw that.

01:56:45 5 **Q.** At that time were you trying to go back to China in late
01:56:48 6 2016?

01:56:49 7 **A.** Yes, November 17, 'cause I try to book a flight to see
01:56:56 8 my friend's concert, to attend their concert at Cangzhou,
01:57:03 9 but I cancel it because the snowstorm.

01:57:07 10 **Q.** All right. Let's turn to the -- let's continue on with
01:57:13 11 this discussion. The next statement from them was, "It would
01:57:18 12 be better if you had some materials on hand."

01:57:22 13 Let's go to the next page, page 10, please.

01:57:25 14 **A.** Yes, I saw that.

01:57:27 15 **Q.** So what did you say at the top of page 10?

01:57:33 16 **A.** I say, "I can talk about both specialties." That
01:57:39 17 means --

01:57:39 18 **Q.** I think we are on the wrong page. You can look on the
01:57:44 19 screen. Do you see the top of page 10?

01:57:50 20 **A.** Okay. Sorry.

01:57:56 21 **Q.** Where it starts with, "It is in a rush"?

01:57:59 22 **A.** Page number 10. I'm there.

01:58:05 23 That's a -- "There is restriction."

01:58:08 24 **Q.** You responded, "There is restriction"?

01:58:11 25 **A.** Right. I mean, that's a restriction for technical

GAU - DIRECT (Mangan)

86

01:58:19 1 report. I only can provide this public material, or it is
01:58:27 2 literature.

01:58:28 3 **Q.** Are you talking about --

01:58:30 4 **A.** From --

01:58:32 5 **Q.** I'm sorry. Are you talking about Honeywell restrictions?

01:58:35 6 **A.** I'm talking about in general there are restriction for
01:58:40 7 technical information. I mean like proprietary is limited.

01:58:49 8 That's different level of restriction. I mean, the
01:58:53 9 first one would be strictly limited, like classified
01:58:57 10 material. Nobody can allow to be seen. The second level is
01:59:02 11 only distributed to limited authority. Only you have
01:59:08 12 approval, you can see the material.

01:59:12 13 And there material distributed publicly to anybody,
01:59:20 14 that is publish or it is public literature.

01:59:25 15 **Q.** All right. So are these the -- these are the
01:59:28 16 restrictions you're talking about in the chat? When you said,
01:59:35 17 "There is restriction"?

01:59:36 18 **A.** I did not catch your question. Sorry.

01:59:41 19 **Q.** All right. Well, let's go back to the chat, okay?

01:59:44 20 **A.** Yes.

01:59:44 21 **Q.** You said, "There is restriction."

01:59:46 22 Do you see that?

01:59:47 23 **A.** Yes, I saw.

01:59:48 24 **Q.** And then what is the response from the other side?

01:59:52 25 **A.** "Just try to bring some."

GAU - DIRECT (Mangan)

87

01:59:57 1 Q. All right. If we can scan down a little bit.

02:00:00 2 A. Sure.

02:00:00 3 Q. What did you then write?

02:00:02 4 A. I said it's too technical.

02:00:07 5 And "Taihang," that's a Chinese-made engine. It's

02:00:15 6 called Taihang.

02:00:19 7 "What do you mean?" It is the message made.

02:00:23 8 This is China-made engine. I read it on magazines.

02:00:28 9 Q. And then they responded, "Any materials would work"?

02:00:31 10 A. They respond, "Any material would work."

02:00:40 11 Q. All right. Did you understand that they were asking you

02:00:42 12 to bring materials over from the United States?

02:00:44 13 A. I understand that, but I don't know specifically what

02:00:51 14 kind of material. Is any material is fine. Like material,

02:00:58 15 material, material or information, information, information.

02:01:03 16 But it's not really specific what kind of information.

02:01:12 17 MR. MANGAN: All right. Let's go to the next page,

02:01:17 18 page 11 at the bottom.

02:01:19 19 THE WITNESS: Yes, I'm there.

02:01:20 20 BY MR. MANGAN:

02:01:20 21 Q. Do you see where --

02:01:23 22 MR. MANGAN: Further down, please. Thank you.

02:01:23 23 BY MR. MANGAN:

02:01:25 24 Q. Do you see where it says, "You can also call my coworker

02:01:33 25 Little Xu," and then there's a phone number? It's at the

GAU - DIRECT (Mangan)

88

02:01:39 1 bottom of page 11.

02:01:41 2 **A.** Yes, I saw that. "You can also call my coworker,

02:01:46 3 Little Xu."

02:01:47 4 **Q.** All right. And is that the person that you had met

02:01:49 5 previously?

02:01:50 6 **A.** Yes, the first time.

02:01:55 7 **Q.** All right.

02:01:55 8 **A.** Along with Little Zha, the 2016 trip, March.

02:02:02 9 **Q.** All right. Did you end up cancelling the trip in 2016,

02:02:08 10 or at least after these messages? You didn't go in 2016, did

02:02:14 11 you?

02:02:14 12 **A.** You mean November 17?

02:02:17 13 **Q.** In November, yes.

02:02:18 14 **A.** November 17 I cancel, cancel that trip on the day

02:02:25 15 because my friend, musical friend told me there's a severe

02:02:31 16 wind storm. It's too cold for me to handle the cold weather

02:02:35 17 there. So I cancel the trip, did not go to Cangzhou to see

02:02:46 18 my friend.

02:02:48 19 **Q.** Okay. After you cancelled the trip, did you continue to

02:02:52 20 send WeChats with them?

02:02:54 21 **A.** Yes.

02:02:56 22 **Q.** Can you --

02:02:58 23 **A.** There's a WeChat.

02:02:59 24 **Q.** Can you turn to Exhibit 87b? Eight-seven-b.

02:03:09 25 **A.** I'm there. 87b.

GAU - DIRECT (Mangan)

89

02:03:13 1 Q. Do you recognize these WeChats?

02:03:14 2 A. Oh, yes. Yes, I recognize it.

02:03:19 3 Q. And are these also between -- chats between you and the

02:03:25 4 handle YouJun?

02:03:33 5 A. That's from YouJun, right, Y-O-U-J-U-N. Yes, that I

02:03:41 6 recognize.

02:03:42 7 MR. MANGAN: Your Honor, we'd move to admit Exhibit

02:03:45 8 87b.

02:03:46 9 MR. MIEDEL: No objection.

02:03:47 10 THE COURT: It's admitted.

02:03:49 11 (Government Exhibit 87b was received in evidence.)

02:03:49 12 MR. MANGAN: May we publish 87b, page 1?

02:03:52 13 THE COURT: Yes.

02:03:58 14 THE WITNESS: Yes, I'm there, 87b.

02:03:58 15 BY MR. MANGAN:

02:04:00 16 Q. All right. We're going to look at the message dated at

02:04:05 17 the top, please, January 5, 2017. Do you see a message where

02:04:10 18 it says, "Teacher Gau, how do you feel about coming back for

02:04:15 19 an exchange after the Spring Festival, when it's warmer?"

02:04:20 20 Do you see that?

02:04:23 21 A. Not yet. Sorry. I missed a page. 87b, Number 1?

02:04:30 22 Q. 87b, page 1.

02:04:30 23 A. Page 1.

02:04:33 24 Q. It's also on the screen if you want to look at the

02:04:36 25 screen.

GAU - DIRECT (Mangan)

90

02:04:39 1 **A.** In the middle, there's a message, "Will you be able to
02:04:45 2 make the trip, Teacher Gau?"
02:04:48 3 That's me.
02:04:50 4 **Q.** Yes, okay. Just above that did they invite you to come
02:04:53 5 back for an exchange?
02:04:54 6 **A.** Yes. They say, "Thank you. In the beginning of a new
02:04:58 7 year, I wish you good luck, health, and peace."
02:05:03 8 **Q.** All right. We're going to turn to page 2.
02:05:12 9 **A.** Okay. I'm there, page number 2.
02:05:16 10 **Q.** And we're looking at the very top of it in blue. Do you
02:05:19 11 see that?
02:05:20 12 **A.** Yes.
02:05:20 13 **Q.** All right.
02:05:22 14 **A.** It say, "Teacher Gau, in the future, Little Wang from
02:05:27 15 our association will be specifically in charge of your
02:05:32 16 exchange in China. Let me send you her WeChat contact."
02:05:41 17 **Q.** All right. And then the contact below it, does it have
02:05:45 18 the name Mujin, M-U-J-I-N?
02:05:53 19 **A.** Yes, M-U-J-I-N. The other user ID.
02:06:00 20 **Q.** All right.
02:06:01 21 **A.** On the WeChat, right.
02:06:03 22 **Q.** And who was Mujin?
02:06:06 23 **A.** Mujin, as far as, she is a girl to graduate, a new
02:06:15 24 graduate, and is working with Mr. Xu, X-U, for my -- this
02:06:22 25 exchange trip to China. So she made all the arrangement

GAU - DIRECT (Mangan)

91

02:06:30 1 during the liaison, making connection between me and setting
02:06:37 2 up the trip in 2017.

02:06:40 3 **Q.** Was this the trip in October of 2017?

02:06:44 4 **A.** Yes, that's correct. October 12, I think. That's the
02:06:49 5 day I took the trip.

02:06:50 6 **Q.** And did you know her by the name Mujin or by Little Wang?

02:06:55 7 **A.** I know her by the name Mujin. It's more familiar, the
02:07:05 8 name Mujin.

02:07:06 9 **Q.** And did you exchange emails with Mujin?

02:07:08 10 **A.** Yes, I sent her the ticket, the returning ticket, the
02:07:20 11 receipt for return trip for 2017.

02:07:22 12 **Q.** You sent her the ticket and the receipt?

02:07:25 13 **A.** Yes, it's electronic ticket. And I forward to her.

02:07:30 14 **Q.** Okay. Were you supposed to prepare a presentation for
02:07:33 15 that trip?

02:07:34 16 **A.** The full topic send for Mujin on the WeChat. They have
02:07:45 17 listed us four topics on my WeChat.

02:07:50 18 **Q.** So she listed four topics for you?

02:07:52 19 **A.** Yes. Those are presentation topic, and I followed the
02:07:59 20 topics to prepare for my PowerPoint file for presentation.

02:08:07 21 **Q.** All right.

02:08:08 22 THE COURT: Is this a decent breaking point?

02:08:11 23 MR. MANGAN: Sure, Your Honor.

02:08:13 24 THE COURT: We're going to take a 20 -minute break.

02:08:15 25 During the break, take a break, jurors. You're doing great

GAU - DIRECT (Mangan)

92

02:08:19 1 work. Don't discuss the case with anyone or among yourselves.

02:08:21 2 No independent research. Continue to keep an open mind.

02:08:24 3 We'll rise as you leave.

02:08:27 4 THE COURTROOM DEPUTY: All rise for the jury.

02:08:31 5 (Jury out at 2:08 p.m.)

02:08:58 6 THE COURT: 20-minute break. See you then.

02:09:07 7 THE COURTROOM DEPUTY: This court is in recess for

02:09:09 8 20 minutes.

02:09:10 9 (Recess from 2:09 p.m. until 2:28 p.m.)

02:28:24 10 THE COURT: We ready to proceed from the

02:28:26 11 government's perspective?

02:28:27 12 MR. MANGAN: Yes, Your Honor.

02:28:27 13 THE COURT: Defense as well? Is the defense ready

02:28:30 14 to proceed?

02:28:31 15 MR. MIEDEL: Oh, I'm sorry. Yes.

02:28:33 16 THE COURT: Very well. Thank you, Mr. Miedel.

02:28:36 17 Let's get the jury.

02:30:00 18 THE COURTROOM DEPUTY: All rise for the jury.

02:30:02 19 (Jury in at 2:30 p.m.)

02:30:34 20 THE COURT: You may all be seated. Thank you.

02:30:37 21 15 members of the jury have returned after a break.

02:30:42 22 Welcome back.

02:30:42 23 We'll continue to hear testimony. The witness remains

02:30:46 24 under oath.

02:30:47 25 Mr. Mangan, you can proceed.

GAU - DIRECT (Mangan)

93

02:30:50 1 MR. MANGAN: Thank you, Your Honor.

02:30:52 2 THE COURT: Very well.

02:30:53 3 BY MR. MANGAN:

02:30:53 4 Q. Mr. Gau, I believe we were talking about the arrangements

02:30:57 5 you were making for your October 2017 trip. Do you recall

02:31:03 6 that?

02:31:03 7 A. Yes.

02:31:04 8 Q. All right. And you were communicating by email with a

02:31:08 9 woman. What was her name?

02:31:10 10 A. Mujin, M-U-J-I-N.

02:31:17 11 Q. Thank you.

02:31:18 12 A. Or Mrs. Wang.

02:31:20 13 Q. Or Mrs. Wang.

02:31:22 14 I'm going to have you take a look at some exhibits in the

02:31:26 15 book. Can you turn to Exhibit 85, please.

02:31:54 16 A. I'm there, 85.

02:31:56 17 Q. Great. Do you recognize these emails?

02:32:00 18 A. Yes, I recognize the email.

02:32:03 19 Q. And are you one of the individuals on the emails?

02:32:06 20 A. Is a email from me to Mujin.

02:32:17 21 Q. All right.

02:32:18 22 MR. MANGAN: Your Honor, we'd move to admit Exhibit

02:32:20 23 85.

02:32:21 24 MR. MIEDEL: No objection.

02:32:22 25 THE COURT: It's admitted.

GAU - DIRECT (Mangan)

94

02:32:27 1 (Government Exhibit 85 was received in evidence.)

02:32:27 2 MR. MANGAN: May we publish Exhibit 85?

02:32:30 3 THE COURT: Yes.

02:32:34 4 BY MR. MANGAN:

02:32:34 5 Q. In the first email, is this when you sent the ticket

02:32:38 6 receipt to Mujin?

02:32:39 7 A. Yes. It is -- it is email to Mujin.

02:32:49 8 Q. All right. Then I'd like to turn to page -- one moment.

02:32:57 9 Can you turn to page 5, please.

02:33:07 10 A. Yes, I'm there.

02:33:09 11 Q. Did you email presentation slides to Mujin?

02:33:13 12 A. Yes.

02:33:15 13 Q. All right. How many different presentation documents did

02:33:19 14 you send her?

02:33:20 15 A. There were seven files, is pdf files.

02:33:26 16 Q. And did these files pertain to topics like ECU control?

02:33:33 17 A. Yes.

02:33:36 18 Q. And what is ECU control?

02:33:38 19 A. ECU stand for electronic control unit.

02:33:45 20 Q. All right. Electronic control unit.

02:33:47 21 A. Yes.

02:33:51 22 Q. All right. And did you also send her presentations

02:33:54 23 regarding something called FADEC controls?

02:33:57 24 A. Yes.

02:34:00 25 Q. And what does FADEC stand for?

GAU - DIRECT (Mangan)

95

02:34:03 1 **A.** The FADEC stand for full authority electric --

02:34:09 2 electronic control unit.

02:34:13 3 **Q.** All right. And is that something used in aviation

02:34:15 4 electronics?

02:34:16 5 **A.** Yes.

02:34:18 6 **Q.** All right. Now, I'd like to ask you about the trip.

02:34:22 7 Where did you go on your trip in October 2017?

02:34:27 8 **A.** Sure.

02:34:30 9 **Q.** What city did you go to?

02:34:32 10 **A.** Sorry. I did not catch that question.

02:34:38 11 **Q.** Sure. In October 2017, what city in China did you visit?

02:34:42 12 **A.** Nanjing.

02:34:45 13 **Q.** All right. And who did you meet in Nanjing?

02:34:49 14 **A.** I met Mr. Xu, X-U, and W-H, that's Mujin, Ms. Wang, and

02:35:02 15 also there's a Secretary Cai. It's C-A-I, last name. And

02:35:12 16 also the three engineers.

02:35:15 17 **Q.** All right. So just to make sure I heard it, you met with

02:35:20 18 Ms. Mujin?

02:35:21 19 **A.** Yes.

02:35:22 20 **Q.** Mr. Xu, X-U?

02:35:26 21 **A.** Xu, yes.

02:35:28 22 **Q.** And someone called Secretary Cai?

02:35:31 23 **A.** Yes.

02:35:31 24 **Q.** Spelled C-A-I?

02:35:33 25 **A.** Yes. And then three engineers.

GAU - DIRECT (Mangan)

96

02:35:39 1 **Q.** And three engineers, okay. And did you give a
02:35:41 2 presentation to the engineers?
02:35:42 3 **A.** Yes, I give presentation to them in a hotel room.
02:35:52 4 **Q.** All right. In addition to the presentation, where else
02:35:56 5 did you go on your trip?
02:35:58 6 **A.** I have two days sight-seeing trip in West Lake City.
02:36:08 7 It's a wetland, natural park, is a scenic resort place. I
02:36:17 8 spent two days there. Actually two and a half days, taking
02:36:24 9 this train to get there and back.
02:36:26 10 And I also took a trip to see my musical friend in
02:36:37 11 Cangzhou, and that was a day.
02:36:38 12 **Q.** Who went with you on the sight-seeing trip?
02:36:43 13 **A.** Okay. This Mujin, okay, and also the Secretary Cia.
02:36:50 14 That's C-A-I.
02:36:52 15 MR. MANGAN: I'm going to ask that the witness be
02:36:54 16 shown Exhibit 82 on the screen.
02:36:57 17 THE COURT: Yes.
02:37:03 18 THE WITNESS: Okay. Now I got it on the screen.
02:37:04 19 BY MR. MANGAN:
02:37:05 20 **Q.** Great. Do you recognize this?
02:37:07 21 **A.** Yes, I can recognize.
02:37:09 22 **Q.** What is this?
02:37:11 23 **A.** Okay, the one on the right --
02:37:14 24 **Q.** Well, is --
02:37:16 25 **A.** -- is myself.

GAU - DIRECT (Mangan)

97

02:37:17 1 Q. Is this a picture?

02:37:18 2 A. Yes, that's a photo I took on the wetland entrance to

02:37:26 3 this park, national park.

02:37:29 4 MR. MANGAN: Your Honor, we'd move to admit Exhibit

02:37:31 5 82.

02:37:32 6 MR. MIEDEL: No objection.

02:37:33 7 THE COURT: Admitted.

02:37:36 8 (Government Exhibit 82 was received in evidence.)

02:37:36 9 BY MR. MANGAN:

02:37:36 10 Q. All right. Looking at the picture on the screen,

02:37:41 11 Mr. Gau, can you describe who the three people are?

02:37:46 12 THE COURT: Do you want the jury to see it?

02:37:48 13 MR. MANGAN: I'm sorry, yes. Could you publish it,

02:37:51 14 Your Honor?

02:37:52 15 THE COURT: Please.

02:37:54 16 MR. MANGAN: Thank you.

02:37:55 17 BY MR. MANGAN:

02:37:56 18 Q. Do you see the picture on the screen?

02:37:58 19 A. Yes, I saw it.

02:37:59 20 Q. All right. Who is the taller gentleman on the left?

02:38:03 21 A. It's the Secretary Cai, C-A-I.

02:38:09 22 Q. Okay. And who is the person in the middle?

02:38:11 23 A. It's Mujin.

02:38:13 24 Q. That's Mujin?

02:38:15 25 A. Also known as Wang, W-H.

GAU - DIRECT (Mangan)

98

02:38:23 1 **Q.** And then are you in the picture as well?

02:38:25 2 **A.** And the one on the right is next to Mujin, that's

02:38:30 3 myself.

02:38:32 4 **Q.** Okay. And this was during your sight-seeing trip?

02:38:36 5 **A.** Yes.

02:38:37 6 **Q.** All right. Thank you. I'd like to go back to your

02:38:42 7 presentation that was in the hotel, okay?

02:38:44 8 **A.** Yes.

02:38:45 9 **Q.** What was -- do you remember the date of that

02:38:47 10 presentation?

02:38:48 11 **A.** I think it's October 13. It's a Friday. I remember it

02:38:57 12 Friday, late afternoon.

02:38:58 13 **Q.** In October 2017?

02:39:00 14 **A.** 2017, yes, that's correct.

02:39:02 15 **Q.** All right. And you said you were in a hotel, correct?

02:39:09 16 **A.** Yes.

02:39:09 17 **Q.** Who was in the room during your presentation?

02:39:13 18 **A.** Mr. Xu, Mujin, and also the Secretary Cai and three

02:39:25 19 other engineers.

02:39:27 20 **Q.** All right. And during your presentation, did you discuss

02:39:31 21 the slides that you had sent to Mujin?

02:39:34 22 **A.** Yes, I showed the slide on a projection to the screen.

02:39:48 23 **Q.** And did you talk about ECU controls and FADEC?

02:39:51 24 **A.** I talk about some of the topics related to FADEC, like

02:40:01 25 how the box looks like, the circuitry, the redundancy

GAU - DIRECT (Mangan)

99

02:40:09 1 features, and then some of the concept of the controls.

02:40:16 2 Q. At the time, were you aware that the meeting might be

02:40:19 3 recorded?

02:40:21 4 A. No, I don't have idea it was recorded. I had no clue

02:40:27 5 it was record.

02:40:29 6 Q. Have you since heard a recording of the meeting?

02:40:32 7 A. Yes, later.

02:40:35 8 Q. And did the FBI play that recording for you?

02:40:37 9 A. Only very small, small part of it. Only one segment is

02:40:44 10 all.

02:40:44 11 Q. But have you since heard the entire recording?

02:40:47 12 A. Yes.

02:40:51 13 Q. All right. And have you reviewed a transcript of that

02:40:53 14 recording?

02:40:53 15 A. Yes, I review them entire.

02:40:57 16 Q. Looking at Exhibit 86a in your binder, if you could turn

02:41:04 17 to that.

02:41:16 18 A. Yes, I'm there.

02:41:17 19 Q. All right. Is that the transcript you reviewed of the

02:41:19 20 meeting?

02:41:19 21 A. Yes.

02:41:21 22 Q. All right. And is this -- was this a recording of your

02:41:25 23 actual presentation in China?

02:41:28 24 A. Yes, that's correct.

02:41:31 25 Q. And then at some point did you leave the meeting?

GAU - DIRECT (Mangan)

100

02:41:35 1 **A.** At the end of my talk, then I left the room. I went
02:41:40 2 back to hotel, hotel room.
02:41:44 3 **Q.** All right. When you listened, did they continue to talk
02:41:48 4 after you left?
02:41:49 5 **A.** They stay, apparently have some conversation themself.
02:41:58 6 **Q.** Did you --
02:41:59 7 **A.** Still in the room I left.
02:42:01 8 **Q.** And did you hear that additional conversation on the
02:42:03 9 recording?
02:42:04 10 **A.** Yes, on recording, yes.
02:42:07 11 **Q.** And it's in the transcript as well?
02:42:09 12 **A.** Yes, I saw the transcript. I review them.
02:42:13 13 **Q.** And did you also see the transcript of some phone calls
02:42:16 14 that were made at the end?
02:42:19 15 **A.** Yes.
02:42:20 16 **Q.** All right. And did you hear Mr. Xu talking during that
02:42:26 17 meeting after you left? X-U?
02:42:33 18 **A.** Sorry. I did not catch exactly.
02:42:35 19 **Q.** On the recording after you left, did you hear Mr. Xu
02:42:38 20 speaking to the other engineers?
02:42:40 21 **A.** Yes.
02:42:43 22 MR. MIEDEL: Your Honor, objection. I am just going
02:42:45 23 to ask Mr. Mangan to not lead.
02:42:51 24 MR. MANGAN: I'm doing my best.
02:42:55 25 THE COURT: Don't lead.

GAU - DIRECT (Mangan)

101

02:42:56 1 MR. MANGAN: Yes, Your Honor.

02:42:58 2 If we could take a look at 86d. This is already

02:43:03 3 admitted, Your Honor. May we publish page 4?

02:43:06 4 THE COURT: 86d?

02:43:08 5 MR. MANGAN: 86d as in "dog," page 4, please.

02:43:11 6 THE WITNESS: I'm there.

02:43:19 7 BY MR. MANGAN:

02:43:21 8 Q. All right. Mr. Gau, I'm going to read this part of the

02:43:24 9 transcript from the phone call, and then I have a few

02:43:27 10 questions for you, okay?

02:43:28 11 A. Sure.

02:43:30 12 Q. All right. So just read along with me.

02:43:35 13 "Hi, Chai Meng. Hey, another question. Today you, how

02:43:40 14 come you -- I saw that when you introduced yourself from the

02:43:43 15 Foreign Affairs Office of Nanjing University of Aeronautics

02:43:47 16 and Astronautics, didn't we decide that you would use title

02:43:52 17 from the Science and Technology Promotion Association? Er,

02:43:55 18 how about this? Let's say because -- because when I started

02:43:59 19 the first day, I, not the first day -- yesterday I told him

02:44:05 20 our association's deputy secretary, Secretary Cai, may

02:44:10 21 accompany your group in going. Let's do it this way. You

02:44:15 22 just say -- you just say -- you just say that you have a title

02:44:19 23 at Foreign Affairs Office of Nanjing University of Aeronautics

02:44:25 24 and Astronautics, or something like that. Just be ambiguous

02:44:28 25 through it. Just explain it briefly tomorrow to him. And

GAU - DIRECT (Mangan)

102

02:44:31 1 then, um-hmm, okay, okay. Your main identity is still our
02:44:38 2 association's deputy secretary. Otherwise, to host him under
02:44:41 3 the title from Nanjing University of Aeronautics and
02:44:45 4 Astronautics does not sound right. Um-hmm, um-hmm, right,
02:44:51 5 right, right. Doesn't matter. After all, he's not too
02:44:54 6 sensitive about this aspect. Okay."

02:44:59 7 Do you see what I just read there?

02:45:05 8 A. Yes.

02:45:06 9 MR. MANGAN: If we can move it back to the message.

02:45:06 10 BY MR. MANGAN:

02:45:08 11 Q. When it refers to -- you see the name Secretary Cai,
02:45:12 12 C-A-I?

02:45:13 13 A. Yes.

02:45:13 14 Q. Were you introduced to someone called Secretary Cai while
02:45:17 15 you were there?

02:45:17 16 A. Yes, at the end of presentation, when it was recommend
02:45:26 17 by Mr. Xu to take this sight-seeing trip for the weekend,
02:45:34 18 and he called this tall guy in the picture, Secretary Cai,
02:45:44 19 C-A-I.

02:45:45 20 Q. And that was the tall guy we saw in the picture?

02:45:48 21 A. Yes.

02:45:48 22 Q. In Exhibit 82?

02:45:50 23 A. Yes.

02:45:53 24 Q. At the top of this message, he says, "Hi, Chai Meng."

02:45:59 25 Did you ever hear Mr. Xu call him Chai Meng?

GAU - DIRECT (Mangan)

103

02:46:04 1 **A.** No. I did not have chance to hear that, no.

02:46:08 2 **Q.** What did Mr. Xu call the gentleman, the tall gentleman?

02:46:13 3 **A.** I call him -- I cannot remember what I call him. I

02:46:22 4 never call him actually. I mean, it's a long -- a long --

02:46:29 5 on this sight-seeing trip.

02:46:32 6 **Q.** Okay.

02:46:33 7 **A.** And his helping Mujin taking care of the trip, like

02:46:37 8 setting up the meal, the show, looking at the show, the

02:46:44 9 ticket to the park, but I never call him, what's the title

02:46:51 10 or whatever.

02:46:52 11 **Q.** All right. What name was he introduced to you as?

02:46:56 12 **A.** As Mandarin.

02:46:58 13 **Q.** What name did Mr. Xu introduce the tall man to you as?

02:47:04 14 **A.** My first impression, he was from --

02:47:10 15 **Q.** I --

02:47:11 16 **A.** The Foreign Affairs Office, Nanjing University of

02:47:15 17 Aeronautics and Astronautics, when he self introduce

02:47:22 18 himself. And that's my first impression. He was with this

02:47:26 19 Foreign Affairs Office.

02:47:29 20 And then later, during the presentation, at the end of

02:47:34 21 presentation, and I heard he was call Mr. Secretary Cai, and

02:47:41 22 that's the point I realize he is Secretary Cai. But I never

02:47:51 23 ask his full name.

02:47:54 24 **Q.** Okay. I have a couple more questions about this trip,

02:47:59 25 all right?

02:48:00 1 **A.** Sure.

02:48:00 2 **Q.** Who set up your hotel reservation?

02:48:04 3 **A.** Reservation is all by this Mujin.

02:48:10 4 **Q.** Mujin?

02:48:15 5 **A.** Yeah, Mujin.

02:48:15 6 **Q.** Did Mr. Xu, X-U, ever come to your hotel room?

02:48:22 7 **A.** Yes. Yes, he came to my hotel room.

02:48:24 8 **Q.** More than one time?

02:48:25 9 **A.** I think a couple times, yes. I could not remember

02:48:31 10 exactly. But I think couple times.

02:48:36 11 **Q.** Who paid for your trip to China?

02:48:39 12 **A.** Mr. Xu. I think he paid -- paid airfare first. And

02:48:50 13 then last day, very last day there was envelope for

02:48:56 14 presentation.

02:48:58 15 **Q.** All right. Was there -- so was there an initial payment

02:49:01 16 for the airfare?

02:49:03 17 **A.** Yes.

02:49:05 18 **Q.** And how much was that?

02:49:06 19 **A.** It's 1,200 for airfare.

02:49:10 20 **Q.** And who gave you \$1,200?

02:49:13 21 **A.** I think Mr. Xu, because that's the only person that

02:49:23 22 came to my room. I cannot remember exactly actually. This

02:49:29 23 Mujin could mention about airfare, and then left envelope in

02:49:36 24 my hotel room for airfare. My business, handle all the

02:49:48 25 travel, all the sight-seeing and airfare, hotel, and this

02:49:53 1 schedule for the trip, it was handled by Mujin.

02:49:59 2 **Q.** Okay. Was there a second payment in addition to the

02:50:04 3 airfare?

02:50:04 4 **A.** Yes. That's -- that's for the presentation.

02:50:08 5 **Q.** How much was that --

02:50:09 6 **A.** \$5,000 I receive in an envelope.

02:50:16 7 **Q.** I'm sorry. I spoke over you. How much were you paid?

02:50:20 8 **A.** 5,000 U.S. dollars.

02:50:30 9 **Q.** \$5,000?

02:50:31 10 **A.** Yes.

02:50:31 11 **Q.** Okay. During this trip, did you bring your Honeywell

02:50:34 12 laptop with you?

02:50:34 13 **A.** No, never.

02:50:36 14 **Q.** Okay. After you returned from --

02:50:42 15 MR. MANGAN: And we can take the exhibit down. I'm

02:50:44 16 sorry.

02:50:44 17 BY MR. MANGAN:

02:50:44 18 **Q.** After you returned from the October 2017 trip, did you

02:50:49 19 continue to communicate with Mujin?

02:50:51 20 **A.** Yes, from Mujin on WeChat.

02:50:56 21 **Q.** Can you take a look at Exhibit 89?

02:51:23 22 **A.** Excuse me. 89?

02:51:26 23 **Q.** Yes.

02:51:27 24 **A.** I see 88.

02:51:28 25 **Q.** 89.

02:51:34 1 MR. MANGAN: Your Honor, the binder may stop at 88.

02:51:36 2 May I check?

02:51:37 3 THE COURT: Yes.

02:51:51 4 THE WITNESS: Thank you.

02:51:52 5 THE COURT: What did you hand the witness?

02:51:54 6 MR. MANGAN: Your Honor, I handed the witness a copy

02:51:57 7 of Exhibit 89.

02:51:58 8 THE COURT: Very well. Thank you.

02:52:01 9 BY MR. MANGAN:

02:52:02 10 Q. Do you have Exhibit 89, Mr. Gau?

02:52:04 11 A. Yes, I have 89.

02:52:06 12 Q. Can you take a look through it?

02:52:35 13 A. Yes, I'm there.

02:52:36 14 Q. Do you recognize it, sir?

02:52:38 15 A. Yes, sir.

02:52:39 16 Q. Can you explain what it is?

02:52:41 17 A. It is a six topic actually related to this engine

02:52:49 18 controls. It's a turboshaft engine.

02:52:55 19 Q. I don't want you to read through it all at this point.

02:52:58 20 A. Sure.

02:52:58 21 Q. Did someone send this to you?

02:53:00 22 A. Mujin on a WeChat.

02:53:04 23 MR. MANGAN: Your Honor, we --

02:53:06 24 THE WITNESS: After I return from this 2017 -- 2017

02:53:10 25 trip.

02:53:12 1 BY MR. MANGAN:

02:53:12 2 Q. Thank you.

02:53:12 3 MR. MANGAN: Your Honor, we'd move to admit Exhibit

02:53:15 4 89.

02:53:15 5 THE COURT: Any objection?

02:53:16 6 MR. MIEDEL: No objection.

02:53:17 7 THE COURT: It's admitted.

02:53:18 8 (Government Exhibit 89 was received in evidence.)

02:53:18 9 MR. MANGAN: May we publish?

02:53:20 10 THE COURT: Yes.

02:53:25 11 BY MR. MANGAN:

02:53:26 12 Q. So, Mr. Gau, after you returned, did you receive this

02:53:29 13 list from Mujin?

02:53:31 14 A. Yes, that's correct.

02:53:33 15 Q. All right. And did you continue to have communications

02:53:37 16 with her?

02:53:37 17 A. Yes, on the WeChat.

02:53:42 18 Q. All right. And did you discuss possibly going back to

02:53:46 19 China again in 2018?

02:53:48 20 A. Yes, likely invite me back for a future visit.

02:54:00 21 Q. And did you understand they wanted some of this

02:54:05 22 information in the list?

02:54:08 23 A. Yes, but I did not do any work for it.

02:54:16 24 Q. All right. You didn't actually compile the information

02:54:19 25 they asked for?

GAU - DIRECT (Mangan)

108

02:54:20 1 **A.** No, I did not send them any information about this
02:54:28 2 topics.

02:54:30 3 **Q.** All right. Let me ask you, shortly after this, in April
02:54:39 4 1, 2018, were you aware of the defendant, Xu Yanjun, being
02:54:55 5 arrested?

02:54:55 6 **A.** No, I did not have any idea.

02:54:57 7 **Q.** Later on that year, in September of 2018, did the FBI
02:55:01 8 execute a search warrant at your house?

02:55:02 9 **A.** Yes.

02:55:05 10 **Q.** All right. And were you interviewed at that time?

02:55:07 11 **A.** Yes, I was inform. He was extradite to U.S.A.

02:55:15 12 **Q.** Well, I am talking about the investigation into you now.
02:55:17 13 Did the FBI begin investigating you in Arizona?

02:55:21 14 **A.** Yes.

02:55:25 15 **Q.** And did the FBI interview you?

02:55:27 16 **A.** Yes, quite a few times.

02:55:28 17 **Q.** A number of times, correct?

02:55:29 18 **A.** Yes.

02:55:30 19 **Q.** And did you have counsel appointed for you?

02:55:34 20 **A.** No, no. I don't have attorney with me at that time,
02:55:41 21 no.

02:55:41 22 **Q.** Did you eventually get an attorney? Later on did you get
02:55:49 23 an attorney?

02:55:49 24 **A.** Later on, yes.

02:55:50 25 **Q.** Okay. And did that investigation pertain to your October

GAU - DIRECT (Mangan)

109

02:55:57 1 2017 presentation in China?

02:56:00 2 **A.** Yes.

02:56:02 3 **Q.** Did it relate to those documents that you emailed to

02:56:06 4 Mujin?

02:56:07 5 **A.** Yes.

02:56:08 6 **Q.** And at the time, were you working on export control

02:56:16 7 projects at Honeywell?

02:56:17 8 **A.** I did not catch your question exactly. Sorry.

02:56:25 9 **Q.** In 2018, were you still working at Honeywell?

02:56:29 10 **A.** Oh, yes.

02:56:30 11 **Q.** Okay. Regarding the information you emailed to Mujin,

02:56:36 12 was some of that information export controlled by the United

02:56:42 13 States?

02:56:42 14 **A.** The 2017?

02:56:44 15 **Q.** Yes.

02:56:44 16 **A.** Yes.

02:56:45 17 **Q.** All right. You mentioned that you were charged with a

02:56:49 18 crime. Did you plead guilty?

02:56:52 19 **A.** Yes, I plead guilty.

02:56:55 20 **Q.** All right. As part of that plea, did you enter into an

02:57:00 21 agreement with the United States out in Arizona?

02:57:03 22 **A.** I'm just here to tell the truth.

02:57:09 23 **Q.** Okay.

02:57:09 24 **A.** I don't know.

02:57:11 25 **Q.** Did you sign a plea agreement?

GAU - DIRECT (Mangan)

110

02:57:13 1 **A.** Yes. Yes, I sign agreement.

02:57:16 2 **Q.** And in that agreement, did it say that you needed to tell

02:57:21 3 the truth?

02:57:22 4 **A.** Yes.

02:57:23 5 **Q.** Okay. And is there an agreement that you would be

02:57:28 6 sentenced at the low end of the guidelines if you were

02:57:31 7 cooperative? Do you recall that?

02:57:38 8 **A.** I recall this, no benefit or no promise ever written.

02:57:45 9 It's just here to tell the truth.

02:57:48 10 **Q.** All right.

02:57:48 11 **A.** For what I know.

02:57:50 12 **Q.** You have not been sentenced yet; is that correct?

02:57:54 13 **A.** No.

02:57:54 14 **Q.** Okay. Did you tell Honeywell about meeting Zha Rong and

02:58:08 15 Mr. Xu in 2016 in China?

02:58:10 16 **A.** No.

02:58:12 17 **Q.** Did you tell your company about your trip to China in

02:58:17 18 2017 to meet them?

02:58:18 19 **A.** No.

02:58:20 20 **Q.** And did you tell Honeywell that you were paid by those

02:58:23 21 individuals for those trips?

02:58:26 22 **A.** The first trip, very first trip, 1997, yes.

02:58:32 23 **Q.** All right. How about the trips in 2016 and 2017?

02:58:37 24 **A.** No.

02:58:37 25 **Q.** For those trips, you didn't tell Honeywell you were paid

GAU - DIRECT (Mangan)

111

02:58:42 1 by these other individuals?

02:58:43 2 A. No.

02:58:45 3 Q. And when were you terminated by Honeywell?

02:58:48 4 A. Yes, it's January 10, 2017. Sorry. January 10, 2019,
02:59:00 5 that's my last day at work officially.

02:59:05 6 MR. MANGAN: No further questions, Your Honor.

02:59:07 7 THE COURT: Very well. That neatly coincides with
02:59:12 8 our appointed break. It's 3 o'clock. We're going to break
02:59:15 9 for 20 minutes.

02:59:16 10 During the break, enjoy the break, jurors. Don't discuss
02:59:20 11 the case among yourselves or with anyone else. No independent
02:59:22 12 research. Continue to keep an open mind.

02:59:25 13 We'll rise as you leave for a 20-minute break.

02:59:28 14 THE COURTROOM DEPUTY: All rise for the jury.

02:59:29 15 (Jury out at 2:59 p.m.)

03:00:06 16 THE COURT: The jury's left the room. We're going
03:00:10 17 to recess for 20 minutes. See you at that time. We're in
03:00:14 18 recess.

03:00:15 19 THE COURTROOM DEPUTY: The court is now in recess
03:00:18 20 for 20 minutes.

03:00:19 21 (Recess from 3:00 p.m. until 3:21 p.m.)

03:21:37 22 THE COURT: We're back in the open courtroom on the
03:21:41 23 record outside the presence of the jury.

03:21:42 24 I want to memorialize something on the record. I
03:21:48 25 understand that defendant's retained translator, Ms. Harmon,

03:21:55 1 with her client's consent, has agreed to become the second
03:22:00 2 court reporter -- translator for the court in order to spell
03:22:09 3 Ms. Murphy on occasion. I want to make sure that that is the
03:22:15 4 agreement. The Court will pay Ms. Harmon the standard rate.
03:22:22 5 Is that the agreement? I need a lawyer for the defense
03:22:25 6 to confirm.
03:22:27 7 MR. MIEDEL: Yes, Your Honor.
03:22:28 8 THE COURT: And does Mr. Xu agree?
03:22:32 9 THE DEFENDANT: (In English) yes.
03:22:32 10 THE COURT: Very well. We'll proceed in that way.
03:22:36 11 Ms. Harmon, thank you.
03:22:39 12 Are we ready to get the jury from the government's
03:22:42 13 perspective?
03:22:43 14 MR. MANGAN: Yes, Your Honor.
03:22:44 15 THE COURT: And the defense?
03:22:46 16 MR. MIEDEL: Yes, Your Honor.
03:22:47 17 THE COURT: Let's call for the jury.
03:23:17 18 Who is interpreting this next portion?
03:23:21 19 THE INTERPRETER: Mae Harmon.
03:23:25 20 THE COURT: Very well. And the agreement is that
03:23:39 21 Ms. Harmon will do this through the conclusion of trial; is
03:23:42 22 that right, Ms. Harmon?
03:23:45 23 THE INTERPRETER: Yes, that's correct.
03:23:46 24 THE COURT: And Mr. Xu understands that, counsel?
03:23:49 25 MR. MIEDEL: Yes.

03:23:49 1 THE COURT: Can I get a yes from Mr. Xu?

03:23:52 2 THE DEFENDANT: (In English) yes.

03:23:53 3 THE COURT: Thank you.

03:24:08 4 THE COURTROOM DEPUTY: All rise for the jury.

03:24:09 5 (Jury in at 3:24 p.m.)

03:24:44 6 THE COURT: You may all be seated. Thank you.

03:24:47 7 The jurors have -- all 15 have rejoined us after a break.

03:24:51 8 Welcome back.

03:24:52 9 We will continue to hear testimony. We're now at

03:24:59 10 cross-examination. The lawyer for the defendant gets a chance

03:25:03 11 to ask questions.

03:25:05 12 Counsel, you may proceed.

03:25:07 13 MR. MIEDEL: Thank you, Your Honor.

03:25:08 14 **CROSS-EXAMINATION**

03:25:08 15 BY MR. MIEDEL:

03:25:09 16 Q. Good afternoon, Mr. Gau.

03:25:12 17 A. Good afternoon.

03:25:12 18 Q. My name is Florian Miedel, and I am an attorney for

03:25:17 19 Mr. Xu, okay?

03:25:18 20 A. Sure.

03:25:18 21 Q. Can you hear me okay?

03:25:19 22 A. Sure.

03:25:20 23 Q. Okay.

03:25:21 24 A. Yeah, I can hear.

03:25:23 25 Q. Thank you.

03:25:24 1 **A.** Maybe louder, please.

03:25:25 2 **Q.** Okay. Mr. Gau, I'm going to try to make this as simple

03:25:29 3 as I can for you, okay? I'm going to ask you -- almost all of

03:25:34 4 the questions I am going to ask you are only going to require

03:25:37 5 a "yes" or "no" answer, okay?

03:25:38 6 **A.** Sure. Thank you.

03:25:39 7 **Q.** If you cannot answer a question with a "yes" or "no,"

03:25:43 8 please let me know.

03:25:44 9 **A.** Okay.

03:25:44 10 **Q.** Thank you.

03:25:52 11 Mr. Gau, you testified that your first trip to China to

03:25:57 12 give a lecture was in 1997, correct?

03:26:00 13 **A.** Yes.

03:26:01 14 **Q.** And at the time you were working at AlliedSignal; is that

03:26:05 15 right?

03:26:05 16 **A.** AlliedSignal, yes.

03:26:08 17 **Q.** Which later joined with Honeywell, correct?

03:26:10 18 **A.** Yes.

03:26:11 19 **Q.** And during that 1997 trip, you lectured at a university

03:26:17 20 in Beijing, correct?

03:26:19 21 **A.** Yes.

03:26:19 22 **Q.** And also at NUAA in Nanjing, correct?

03:26:24 23 **A.** Yes, that's correct.

03:26:25 24 **Q.** And you lectured to students of engineering, right?

03:26:29 25 **A.** Yes.

03:26:30 1 **Q.** And, Mr. Gau, there is absolutely nothing wrong with
03:26:34 2 doing that, right?
03:26:35 3 **A.** Yes.
03:26:38 4 **Q.** You agree that there is nothing wrong with doing that?
03:26:40 5 **A.** Yes, I agree.
03:26:42 6 **Q.** There is nothing wrong with an engineer like you sharing
03:26:47 7 your experience and expertise, correct?
03:26:50 8 **A.** Yes.
03:26:52 9 **Q.** And would you agree that scientists and experts and
03:26:58 10 professionals from the United States often travel to other
03:27:02 11 countries to give presentations, correct?
03:27:05 12 **A.** Yes.
03:27:06 13 **Q.** And they may attend seminars or teach seminars, right?
03:27:11 14 **A.** Yes, that's correct.
03:27:12 15 **Q.** And talk at conferences, right?
03:27:14 16 **A.** Yes.
03:27:14 17 **Q.** And provide technical exchanges, right?
03:27:19 18 **A.** Yes.
03:27:20 19 **Q.** And scientists and professionals and engineers from other
03:27:25 20 countries come to the United States and do the same thing,
03:27:27 21 right?
03:27:28 22 **A.** Yes, I agree.
03:27:30 23 **Q.** Okay. In fact, on your direct testimony, you mentioned a
03:27:38 24 Professor Gao that you got to know at NUAA.
03:27:41 25 **A.** Yes.

03:27:42 1 **Q.** Do you remember that?

03:27:43 2 **A.** Yes, I know him.

03:27:44 3 **Q.** And he's a professor in helicopter engineering; is that

03:27:48 4 right?

03:27:48 5 **A.** Rotor dynamics, yes.

03:27:52 6 **Q.** Rotor dynamics?

03:27:53 7 **A.** That's aerodynamics. It's different from my field.

03:27:57 8 **Q.** Okay. And Professor Gao, he came with his colleagues to

03:28:01 9 the United States in 1998, right?

03:28:04 10 **A.** Yes.

03:28:06 11 **Q.** And he went to attend a professional conference, right?

03:28:10 12 **A.** Yes, I think so.

03:28:12 13 **Q.** Okay. And you met with him at that time in Arizona,

03:28:15 14 right?

03:28:17 15 **A.** Yes.

03:28:18 16 **Q.** And, again, there is nothing -- nothing wrong with that,

03:28:20 17 right?

03:28:21 18 **A.** Nothing wrong as turn this to real high.

03:28:27 19 **Q.** Right. But there is nothing --

03:28:29 20 **A.** Nothing wrong.

03:28:29 21 **Q.** Mr. Gau, there is nothing wrong with a professional

03:28:33 22 coming to the United States and participating in conferences,

03:28:36 23 right?

03:28:36 24 **A.** I agree, nothing wrong.

03:28:38 25 **Q.** Now, Mr. Gau, I'm going to take you through the different

03:28:48 1 times that you went to China just like Mr. Mangan did, okay?

03:28:51 2 **A.** Yes.

03:28:52 3 **Q.** So the first time, as we already said, you went in 1997,

03:28:58 4 right?

03:28:58 5 **A.** Yes.

03:28:58 6 **Q.** And you lectured to students at NUAA, right?

03:29:02 7 **A.** Student, yes.

03:29:04 8 **Q.** And that's when you met Professor Gao?

03:29:06 9 **A.** Yes.

03:29:07 10 **Q.** And during that trip in 1997, nobody asked you, in China,

03:29:14 11 to reveal any trade secrets, right?

03:29:17 12 **A.** No.

03:29:18 13 **Q.** Okay.

03:29:20 14 **A.** It's all academic.

03:29:21 15 **Q.** Right. And then you went back to China in the year 2000,

03:29:28 16 correct?

03:29:28 17 **A.** Yes.

03:29:29 18 **Q.** And at that time you also again gave a presentation at

03:29:37 19 the University in Nanjing, correct?

03:29:39 20 **A.** Yes.

03:29:40 21 **Q.** And, in fact, there were more than 100 students that

03:29:43 22 attended that seminar; isn't that right?

03:29:47 23 **A.** I cannot remember exactly. Probably 50.

03:29:49 24 **Q.** More like 50?

03:29:50 25 **A.** Yeah.

03:29:51 1 **Q.** Okay. And during that trip in -- in 2000, that's when
03:30:00 2 you met Mr. Zha Rong, right?
03:30:04 3 **A.** Yes, first time.
03:30:06 4 **Q.** The first time. And he was with the NUAA Foreign Affairs
03:30:09 5 Office, correct?
03:30:10 6 **A.** Yes.
03:30:10 7 **Q.** Now, during that trip in 2000, nobody asked you to reveal
03:30:16 8 any trade secrets, right?
03:30:17 9 **A.** No.
03:30:20 10 **Q.** All right. Let's move on to the trip that you took in
03:30:26 11 2002-2003. You left in December and came back in January,
03:30:31 12 right?
03:30:31 13 **A.** That's correct.
03:30:31 14 **Q.** Okay. December 2002 and you came back January 2003?
03:30:37 15 **A.** Yes, that's correct.
03:30:38 16 **Q.** In fact, you brought your mother along for that trip,
03:30:42 17 right?
03:30:42 18 **A.** Yes, that's correct.
03:30:43 19 **Q.** And during that trip, you did not give a lecture,
03:30:49 20 correct?
03:30:49 21 **A.** No.
03:30:51 22 **Q.** But you --
03:30:52 23 **A.** It's all sight-seeing.
03:30:54 24 **Q.** Sight-seeing, right. But during that trip, you still met
03:30:58 25 up -- or you met some people from NUAA, correct?

03:31:01 1 **A.** Yes.

03:31:02 2 **Q.** You met Professor Gao, right?

03:31:04 3 **A.** Yes.

03:31:04 4 **Q.** And you met Zha Rong, right?

03:31:07 5 **A.** Yes. He was along with me this sight-seeing trip.

03:31:14 6 **Q.** Okay. And during that trip in 2002-2003, nobody asked

03:31:18 7 you to reveal any trade secrets, right?

03:31:21 8 **A.** No. Talk in technical -- technically no talk.

03:31:28 9 **Q.** Right. But my question is specifically, during that time

03:31:31 10 nobody asked you to reveal any trade secrets, right?

03:31:34 11 **A.** That's right, I agree. No, no one.

03:31:37 12 **Q.** Thank you.

03:31:45 13 Now then, more than a decade passed without you having

03:31:54 14 any contact with anyone from NUAA, correct?

03:31:57 15 **A.** That's correct.

03:31:57 16 **Q.** And then in 2014 you received a greetings email from Zha

03:32:05 17 Rong, correct?

03:32:06 18 **A.** Yeah, a greeting.

03:32:08 19 **Q.** Yes.

03:32:08 20 **A.** In 2014, January.

03:32:10 21 **Q.** And you talked about that on direct examination earlier

03:32:13 22 today, right?

03:32:13 23 **A.** Yes.

03:32:16 24 **Q.** And after that greeting email, there was another year

03:32:22 25 without any contact, or year and a half, right?

GAU - CROSS (Miedel)

120

03:32:25 1 **A.** Yes.

03:32:26 2 **Q.** And then the next time you had contact with him was in

03:32:29 3 2016, correct?

03:32:30 4 **A.** Yes, the beginning of 2016.

03:32:33 5 **Q.** Beginning of 2016. And in that -- in those conversations

03:32:38 6 or in that conversation at the beginning of 2016, you told Zha

03:32:44 7 Rong that you were coming -- you happened to be going to China

03:32:46 8 in March of 2016, right?

03:32:48 9 **A.** Yes.

03:32:49 10 **Q.** And so you ended up meeting up with him in Beijing,

03:32:54 11 correct?

03:32:56 12 **A.** During the transit, right.

03:32:58 13 **Q.** Right. So you met up with him when you arrived in

03:33:02 14 Beijing before you went on to your other destinations, right?

03:33:05 15 **A.** Yes.

03:33:06 16 **Q.** And then you met up with him again on the way back?

03:33:09 17 **A.** Yes.

03:33:13 18 **Q.** And during that trip he introduced you to Mr. Xu,

03:33:15 19 correct?

03:33:15 20 **A.** Yes.

03:33:18 21 **Q.** And he introduced you by that name, Xu, right?

03:33:25 22 **A.** Xu, X-U.

03:33:31 23 **Q.** X-U. And you met with Mr. Zha Rong and Mr. Xu a couple

03:33:37 24 of times for dinner; isn't that right?

03:33:38 25 **A.** Yes. Just during the transit.

GAU - CROSS (Miedel)

121

03:33:40 1 **Q.** Right. And they paid -- they ended up paying for your
03:33:48 2 hotel, right?
03:33:49 3 **A.** Yes.
03:33:50 4 **Q.** And you testified also that during that meeting you were
03:33:56 5 given \$3,000, correct?
03:33:57 6 **A.** Yes.
03:33:58 7 **Q.** Okay. Which you took, right? You accepted it?
03:34:02 8 **A.** Excuse me. I did not hear your question.
03:34:05 9 **Q.** You accepted that money, right?
03:34:07 10 **A.** Yes.
03:34:07 11 **Q.** Okay.
03:34:09 12 **A.** Yes. I was surprised. Tried to return it. And then,
03:34:15 13 you know, back and forth, but I took it eventually.
03:34:18 14 **Q.** Okay. But during that trip in 2016 when you met with
03:34:43 15 those two gentlemen in Beijing --
03:34:45 16 **A.** Yes.
03:34:45 17 **Q.** -- they didn't ask you to reveal any trade secrets,
03:34:50 18 right?
03:34:50 19 **A.** No. Just like old acquaintance. I treat them like a
03:34:55 20 old acquaintance.
03:34:56 21 **Q.** Okay. And then when you returned to the United States in
03:35:07 22 March of 2016, a couple of months later you started a
03:35:12 23 correspondence on WeChat with Zha Rong and then perhaps
03:35:19 24 Mr. Xu, right?
03:35:19 25 **A.** Yes.

03:35:20 1 **Q.** And you continued that correspondence over the course of
03:35:26 2 the year, right?
03:35:27 3 **A.** Yes.
03:35:28 4 **Q.** And then you had discussions with them about coming to
03:35:33 5 China at the end of 2016 in November, right?
03:35:36 6 **A.** Yes. For the concert --
03:35:36 7 **Q.** Right.
03:35:40 8 **A.** -- of my friend, right.
03:35:42 9 **Q.** But before that they had asked when are you next coming
03:35:46 10 to China, and you told them that you weren't sure, right?
03:35:49 11 **A.** That's correct.
03:35:51 12 **Q.** Okay.
03:35:52 13 **A.** I not sure when.
03:35:55 14 **Q.** And then during the WeChat conversations, you suddenly
03:35:57 15 told them, oh, actually I'm coming next week. Do you remember
03:36:01 16 that?
03:36:01 17 **A.** Yes.
03:36:02 18 **Q.** Okay. And they were surprised, right?
03:36:03 19 **A.** Sorry. I didn't catch that.
03:36:06 20 **Q.** They were surprised, right?
03:36:08 21 **A.** That's a fight?
03:36:10 22 **Q.** They were surprised by the fact that -- withdrawn.
03:36:16 23 You told them that you were coming next week, right?
03:36:20 24 **A.** Uh-huh.
03:36:20 25 **Q.** They were surprised by that, that you hadn't talked about

GAU - CROSS (Miedel)

123

03:36:23 1 that before, right? You suddenly said, I'm coming next week,
03:36:27 2 and they were surprised by that; is that right?
03:36:34 3 **A.** There was a concert set up, you mean.
03:36:35 4 **Q.** I'll move on.
03:36:37 5 **A.** Okay. Sorry I didn't not catch the word "file." Is
03:36:44 6 the file? You mean a file?
03:36:46 7 **Q.** No.
03:36:46 8 **A.** Or a fire?
03:36:47 9 **Q.** Mr. Gau, I will ask you a question, and then we can go
03:36:50 10 on, okay?
03:36:51 11 **A.** Yes.
03:36:52 12 **Q.** Thank you.
03:36:56 13 When you told them that you were going to be coming to
03:36:59 14 China the following week, they asked you to send some
03:37:05 15 materials for your presentation, right? Do you remember that?
03:37:11 16 **A.** Oh, yeah, 2007 --
03:37:16 17 **Q.** Two thousand --
03:37:18 18 **A.** -- 17, presentation's 17 October.
03:37:19 19 **Q.** Mr. Gau, I am still talking about the conversations that
03:37:24 20 you had in the fall of 2016 --
03:37:26 21 **A.** Okay.
03:37:26 22 **Q.** -- with Zha Rong and Mr. Xu over WeChat.
03:37:30 23 **A.** Okay.
03:37:30 24 **Q.** Okay?
03:37:31 25 **A.** Okay.

03:37:32 1 Q. And over WeChat, you told them you were going to be
03:37:35 2 coming to China the following week. Do you remember that?

03:37:37 3 A. Yes.

03:37:38 4 Q. Okay. And they asked you to do a presentation, right?

03:37:42 5 A. Yes.

03:37:42 6 Q. And to send materials. Do you remember that?

03:37:45 7 A. Yes. Yes. yes.

03:37:48 8 Q. Okay.

03:37:51 9 MR. MIEDEL: Can we put on the -- can we publish
03:37:56 10 Exhibit 87a?

03:37:59 11 THE COURT: Has this been admitted?

03:38:01 12 MR. MIEDEL: It's in evidence, yes.

03:38:03 13 THE COURT: All right. We can publish it.

03:38:18 14 THE WITNESS: And --

03:38:19 15 THE COURT: Just a moment, please.

03:38:21 16 BY MR MIEDELL

03:38:21 17 Q We are still waiting for the screen

03:38:23 18 | A Okawa

03:38:24 19 THE COURT: I think it's up now.

03:38:29 20 MR. MIEDELL: Okay. And can we go to page 92?

03:38:44 21 THE WITNESS: I'm there. Thank you.

03:38:16 22 BY MR MIEDEI:

03:38:48 23 Q Mr. Gau, are you there?

03:38:48 24 A Yes I'm there

03:38:50 25 0 Okav

03:38:51 1 **A.** Yes, I'm there.

03:38:52 2 **Q.** And this is the WeChat exchange that you had with either

03:39:03 3 Mr. Zha or Mr. Xu during that time period, correct?

03:39:07 4 **A.** Yes.

03:39:08 5 **Q.** And they asked you to prepare some materials. Do you see

03:39:12 6 that at the top there?

03:39:14 7 **A.** Yes.

03:39:18 8 **Q.** Okay. And by the way, you went through this exact same

03:39:21 9 exchange with the government earlier today. Is this the

03:39:24 10 same -- it's the same one, okay?

03:39:26 11 **A.** Yes. I done it previously, yes.

03:39:29 12 **Q.** Right.

03:39:30 13 MR. MIEDEL: Can we scroll down?

03:39:30 14 BY MR. MIEDEL:

03:39:34 15 **Q.** Now, do you see in the middle of the page it says, "Do

03:39:37 16 you have any materials on hand?"

03:39:39 17 "Because you've made the decision abruptly to come back

03:39:43 18 next week, it's kind of tight."

03:39:45 19 Do you see that?

03:39:46 20 **A.** Yes.

03:39:46 21 **Q.** Okay. Now, Mr. Gau, you've given a lot of presentations

03:39:54 22 in your career, correct?

03:39:55 23 **A.** Yes.

03:39:57 24 **Q.** Okay. And it's common for you to have materials that you

03:40:03 25 prepare for those presentations; isn't that right?

03:40:06 1 **A.** Only public material, literature material.

03:40:14 2 **Q.** I understand. But my question is simply this: When you

03:40:17 3 give a presentation to somebody, whether it's students or

03:40:22 4 fellow engineers, you prepare, right?

03:40:24 5 **A.** Yes. I have to make preparation.

03:40:27 6 **Q.** You make preparation?

03:40:28 7 **A.** For the slides.

03:40:29 8 **Q.** Correct. And you make -- you create materials that you

03:40:33 9 share with the group, right?

03:40:34 10 **A.** Yes.

03:40:41 11 MR. MIEDEL: Okay. Now can we go to the next page,

03:40:43 12 page 10?

03:40:45 13 Okay. That's fine.

03:40:45 14 BY MR. MIEDEL:

03:40:48 15 **Q.** So they asked for materials, and you said, "There is

03:40:52 16 restriction."

03:40:53 17 Do you see that in the second --

03:40:54 18 **A.** Yes.

03:40:56 19 **Q.** Okay. And the response was, "Just try to bring some,"

03:40:59 20 right?

03:40:59 21 **A.** Yes.

03:41:00 22 **Q.** Do you see that?

03:41:01 23 **A.** Yes.

03:41:02 24 **Q.** Okay. And then if we scroll down a little bit, you see

03:41:10 25 that the response from China is, "Any materials would work."

03:41:14 1 Do you see that?

03:41:14 2 A. Yes, I saw, any material.

03:41:17 3 Q. Any materials?

03:41:18 4 A. Sure.

03:41:20 5 Q. So nobody at this point was asking for any specific

03:41:26 6 materials, correct?

03:41:27 7 A. It's not very specific.

03:41:29 8 Q. No, not specific, right?

03:41:31 9 A. Yeah. Just material, material, material.

03:41:33 10 Q. Right.

03:41:34 11 A. That's what I said, information, information,

03:41:37 12 information.

03:41:38 13 Q. Correct.

03:41:38 14 A. But I want specific, and I don't know what type of

03:41:47 15 material.

03:41:47 16 Q. I understand. Mr. Gau, just a reminder, most of the

03:41:48 17 questions I am going to ask you just require a "yes" or "no,"

03:41:51 18 okay?

03:41:51 19 A. Okay.

03:41:52 20 Q. If you don't understand or need me to ask -- reask the

03:41:56 21 question, please just tell me, okay?

03:41:57 22 A. Okay. Sorry about that.

03:41:58 23 Q. No, no problem.

03:42:00 24 Now, it turns out you never ended up going to China on

03:42:09 25 that trip at that time, correct?

03:42:10 1 **A.** There is snowstorm.

03:42:10 2 **Q.** Right.

03:42:14 3 **A.** No, I did not go.

03:42:15 4 **Q.** Thank you. And as a result, you never sent any materials

03:42:25 5 for the presentation, correct?

03:42:26 6 **A.** No, not -- no presentation, no.

03:42:30 7 **Q.** Right. And the people in China never followed up to ask

03:42:36 8 you for more materials, correct?

03:42:38 9 **A.** Yes.

03:42:39 10 **Q.** Okay. Now, in the beginning of 2017 --

03:42:49 11 MR. MIEDEL: You can take that down.

03:42:49 12 BY MR. MIEDEL:

03:42:52 13 **Q.** In the beginning of 2017, you continued to have

03:42:56 14 communications with Mr. Xu on WeChat, right? After this

03:43:04 15 exchange that we just saw, you continued to talk to him on

03:43:07 16 WeChat?

03:43:07 17 **A.** Yeah.

03:43:09 18 **Q.** And then there came a time in early 2017 when he told you

03:43:17 19 that his colleague Mujin was going to be the one arranging

03:43:22 20 your next trip to China, right?

03:43:24 21 **A.** Yes.

03:43:25 22 **Q.** Okay. And Mujin was a female as we saw in the picture,

03:43:29 23 correct?

03:43:29 24 **A.** Yes.

03:43:30 25 **Q.** And you started chatting with her regularly on WeChat,

GAU - CROSS (Miedel)

129

03:43:34 1 right?

03:43:34 2 **A.** Yes.

03:43:35 3 **Q.** And you talked with her about all kinds of things, right?

03:43:39 4 **A.** Yes.

03:43:41 5 **Q.** You talked about opera, for example?

03:43:43 6 **A.** Yes.

03:43:44 7 **Q.** And you talked about travel and hiking and reading,

03:43:48 8 right?

03:43:48 9 **A.** Yes.

03:43:49 10 **Q.** But before October 2017, you did not talk to her really

03:43:57 11 about your work, right?

03:43:59 12 **A.** No.

03:44:00 13 **Q.** Okay. Now, you planned a trip to China in October of

03:44:08 14 2017, right?

03:44:10 15 **A.** Yes, that's correct.

03:44:11 16 **Q.** And that trip was going to involve visiting family in

03:44:15 17 Taiwan, right?

03:44:16 18 **A.** Yes, on the route.

03:44:19 19 **Q.** I'm sorry?

03:44:20 20 **A.** On route of Taiwan.

03:44:22 21 **Q.** Okay. And then also you were going to go to China to

03:44:28 22 give a presentation at NUAA, right?

03:44:30 23 **A.** Yes. Not NUAA. In a hotel, 2017.

03:44:36 24 **Q.** Okay. And then you were also going to do some

03:44:38 25 sight-seeing, right?

03:44:40 1 **A.** Sorry. I did not catch.

03:44:43 2 **Q.** You were going to do some sight-seeing?

03:44:45 3 **A.** Sight-seeing, yes.

03:44:46 4 **Q.** Yes. You left the United States for China on October 10,

03:44:57 5 2017, right?

03:44:58 6 **A.** Yes.

03:44:59 7 **Q.** Okay. The day before, on October 9, 2017, is the first

03:45:06 8 time that Mujin asked you about the presentation, right?

03:45:09 9 **A.** Yes.

03:45:14 10 **Q.** She sent those four topics. Do you remember that?

03:45:18 11 **A.** Yes.

03:45:18 12 **Q.** And that was on the day before you left for China, right?

03:45:22 13 **A.** Yes, very close. I remember it was very close. Just

03:45:30 14 before I took the trip.

03:45:31 15 **Q.** Right.

03:45:32 16 **A.** Now very, very close.

03:45:35 17 **Q.** Okay. And she sent you that list of four possible topics

03:45:39 18 for your presentation on WeChat, right?

03:45:42 19 **A.** Yes.

03:45:43 20 **Q.** Okay. Now, when the FBI came to talk to you in 2018,

03:45:51 21 they took your phone, right? They took your telephone, your

03:45:57 22 cell phone?

03:45:58 23 **A.** Oh, cell phone, yes.

03:45:59 24 **Q.** And they also took your computer, right?

03:46:01 25 **A.** Yes.

03:46:02 1 Q. And they took pictures of those WeChats that you had with
03:46:09 2 Mujin during that time period; is that right?
03:46:14 3 MR. MANGAN: Objection.
03:46:14 4 THE COURT: Excuse me. Give me just a moment.
03:46:17 5 There is an objection.
03:46:20 6 Basis?
03:46:22 7 THE WITNESS: You mean the full --
03:46:23 8 THE COURT: Give me just a moment, sir.
03:46:27 9 THE WITNESS: Sorry.
03:46:32 10 MR. MANGAN: Objection. Foundation.
03:46:34 11 THE COURT: Sustained.
03:46:38 12 BY MR. MIEDEL:
03:46:39 13 Q. Mr. Gau, you are aware that the FBI translated the
03:46:44 14 communications that you had between yourself and Mujin, right?
03:46:49 15 You've seen those?
03:46:50 16 A. Translated.
03:46:51 17 Q. Yes.
03:46:52 18 A. You mean all the scripts?
03:46:54 19 Q. Yes.
03:46:55 20 A. Conversation, yes.
03:46:56 21 Q. You've seen that? You've seen those?
03:46:58 22 A. Yes.
03:46:58 23 Q. Okay. I'm going to show you a document that is -- just
03:47:14 24 for purposes of identification is GP8675.
03:47:19 25 MR. MIEDEL: And just the witness, please.

03:47:22 1 THE COURT: We will show that document to the
03:47:24 2 witness and opposing counsel.

03:47:33 3 MR. MANGAN: We object, Your Honor.

03:47:34 4 THE COURT: I haven't seen it. May I see it?

03:47:41 5 MR. MIEDEL: Sure.

03:47:47 6 THE COURT: What's the basis of the objection?

03:47:50 7 MR. MANGAN: As to the purpose. This isn't --

03:47:53 8 THE COURT: Would you mind taking your mask off and
03:47:56 9 speaking into a microphone.

03:47:58 10 MR. MANGAN: I'm sorry, Your Honor. This isn't a
03:48:01 11 witness refreshing recollection.

03:48:09 12 THE COURT: Ask your question first. What's your
03:48:12 13 question, Mr. Miedel.

03:48:16 14 BY MR. MIEDEL:

03:48:17 15 Q. Is it on the screen? Do you see it?

03:48:19 16 THE COURT: Your question?

03:48:20 17 MR. MIEDEL: I am asking Mr. Gau if he can see the
03:48:20 18 document.

03:48:23 19 THE COURT: All right. Can you --

03:48:23 20 THE WITNESS: Yes, I can see it.

03:48:25 21 MR. MIEDEL: Can we zoom into the bottom there?

03:48:27 22 THE WITNESS: Yes, I remember.

03:48:29 23 BY MR. MIEDEL:

03:48:29 24 Q. Okay. My question to you is, are these the four topics
03:48:35 25 that Mujin asked you to possibly consider presenting on at

03:48:42 1 that conference, or at the talk?

03:48:44 2 **A.** Yes.

03:48:51 3 MR. MIEDEL: Okay. May I have that back, Your

03:48:53 4 Honor?

03:48:53 5 THE COURT: Yes.

03:49:02 6 If you will give me a moment, please.

03:49:04 7 (Pause.)

03:49:29 8 Thank you. You may proceed.

03:49:31 9 MR. MIEDEL: Thank you.

03:49:34 10 BY MR. MIEDEL:

03:49:35 11 **Q.** So, Mr. Gau, these are the four possible topics for the

03:49:41 12 talk you were going to give in Nanjing, correct?

03:49:44 13 **A.** Yes.

03:49:44 14 **Q.** Okay. And I think you've already said this, but the four

03:49:50 15 topics that she sent to you were very general topics, right?

03:49:54 16 **A.** Yes.

03:49:55 17 **Q.** Okay. The first one was about considerations for

03:50:01 18 generator electronic control design, materials, and circuit

03:50:06 19 design, right?

03:50:07 20 **A.** Yes.

03:50:08 21 **Q.** Okay. And that question was a general question, right?

03:50:13 22 **A.** On the topic, yes.

03:50:17 23 **Q.** Okay. And that question is not asking you to reveal any

03:50:21 24 trade secrets, right?

03:50:22 25 **A.** No.

03:50:28 1 **Q.** Okay. The second question concerns the --

03:50:33 2 THE COURT: Give me a moment, please. If you'd be

03:50:36 3 willing to approach.

03:51:55 4 Counsel, he is testifying from a document that's not

03:51:56 5 admitted into evidence. You need to ask him if he remembers

03:52:01 6 the topics. If he can do that, great. If he can't, you can

03:52:04 7 refresh his recollection with the document. But you need to

03:52:09 8 stop asking about a document that is not admitted into

03:52:13 9 evidence and to which there is an objection.

03:52:15 10 MR. MIEDEL: That's fine.

03:52:20 11 BY MR. MIEDEL:

03:52:21 12 **Q.** Mr. Gau, do you remember the four topics that Mujin asked

03:52:24 13 you to possibly present on?

03:52:26 14 **A.** Yes, I remember.

03:52:27 15 **Q.** Okay. Great.

03:52:30 16 THE COURT: So can we take the document down?

03:52:32 17 MR. MIEDEL: We can take it down -- it's down.

03:52:35 18 BY MR. MIEDEL:

03:52:35 19 **Q.** Mr. Gau, one of the questions concerned the three-shot

03:52:40 20 matching control method, right?

03:52:41 21 **A.** Yes.

03:52:42 22 **Q.** And that also is a very general question, right?

03:52:45 23 **A.** Yes.

03:52:46 24 **Q.** Okay. The third question concerned role in design

03:52:52 25 considerations for the T700 engine?

03:52:55 1 **A.** Yes.

03:52:56 2 **Q.** Do you remember that?

03:52:57 3 **A.** Yes.

03:52:57 4 **Q.** Okay. And the T700 engine, that's an engine that was

03:53:03 5 developed by General Electric, right?

03:53:06 6 **A.** Yes, that's true.

03:53:07 7 **Q.** In the 1970s?

03:53:08 8 **A.** Yes.

03:53:09 9 **Q.** Okay. And you did not work at General Electric in 2017,

03:53:16 10 right?

03:53:16 11 **A.** No.

03:53:17 12 **Q.** You worked for Honeywell?

03:53:18 13 **A.** Yes.

03:53:19 14 **Q.** Okay. And you did not work on the T700 engine, right?

03:53:24 15 **A.** No.

03:53:27 16 **Q.** Okay. And then the last questions concerned design

03:53:36 17 considerations for reliable indicators and product design

03:53:40 18 process in mid- and long-term lifespan indicators. Do you

03:53:45 19 recall that?

03:53:45 20 **A.** Yes.

03:53:45 21 **Q.** Okay. And that also is a very general question, correct?

03:53:50 22 **A.** On the topic, yes.

03:53:52 23 **Q.** Yes. And this communication from Mujin, this list of

03:54:03 24 four questions was the only guidance you received for your

03:54:09 25 presentation from the people in China, right?

03:54:11 1 **A.** Yes.

03:54:13 2 **Q.** Okay. Before your presentation in October of 2017,

03:54:23 3 nobody asked you to go back and find Honeywell proprietary

03:54:29 4 material, right?

03:54:30 5 **A.** That's -- not specifically, no.

03:54:35 6 **Q.** I'm sorry?

03:54:36 7 **A.** Not specifically.

03:54:37 8 **Q.** Nobody asked you?

03:54:39 9 **A.** Ask, no.

03:54:39 10 **Q.** Nobody asked you that, right?

03:54:41 11 **A.** No.

03:54:42 12 **Q.** Okay. And nobody even asked you in these four questions

03:54:48 13 to put together a slide presentation with Honeywell material

03:54:54 14 on it, right?

03:54:54 15 **A.** No.

03:54:56 16 **Q.** Okay. Now, you were leaving for China the following day,

03:55:03 17 right?

03:55:04 18 **A.** Yes.

03:55:05 19 **Q.** And so you scrambled and you put together a slide

03:55:09 20 presentation on the 9th and the 10th -- right? -- of October?

03:55:14 21 **A.** I study for a while history --

03:55:17 22 **Q.** Okay.

03:55:18 23 **A.** -- yeah, before getting the topic, because I anticipate

03:55:24 24 there will be a presentation.

03:55:25 25 **Q.** Okay. And you did that on your own, right?

03:55:27 1 **A.** After 2016.

03:55:31 2 **Q.** Yes, exactly. But my question is, you said you

03:55:36 3 anticipated some of the things that you might want to talk

03:55:39 4 about in China, and so you started putting together materials,

03:55:43 5 right?

03:55:43 6 **A.** Yes.

03:55:43 7 **Q.** Okay. And you decided which materials to put on there

03:55:47 8 yourself, right?

03:55:48 9 **A.** Yes.

03:55:50 10 **Q.** Nobody asked you to put certain materials on that slide,

03:55:55 11 or on those slides, right?

03:55:56 12 **A.** Yes.

03:55:57 13 **Q.** Okay.

03:55:59 14 THE COURT: Could I interject here for just a

03:56:02 15 moment?

03:56:02 16 If the translators -- we've been at it almost a half

03:56:07 17 hour. Are you all able to swap out so we have a fresh

03:56:13 18 interpreter --

03:56:13 19 INTERPRETER MURPHY: Yes.

03:56:14 20 THE COURT: -- and so we can continue until 4:30, or

03:56:17 21 should we take a break?

03:56:18 22 INTERPRETER MURPHY: Yes, I can take over, Judge.

03:56:22 23 MR. MIEDEL: They can continue.

03:56:24 24 THE COURT: Are we going to switch the interpreters

03:56:27 25 out?

03:56:27 1 INTERPRETER HARMON: I'm okay. I don't need a
03:56:30 2 switch.

03:56:30 3 THE COURT: And that was Ms. Harmon, right?

03:56:35 4 INTERPRETER HARMON: Yes.

03:56:36 5 THE COURT: All right. She's okay.

03:56:37 6 Excuse the interruption. Please proceed, counsel.

03:56:41 7 MR. MIEDEL: Thank you.

03:56:44 8 BY MR. MIEDEL:

03:56:44 9 Q. Now, you ended up emailing seven --

03:56:50 10 A. Files.

03:56:50 11 Q. -- files, right, to Mujin?

03:56:54 12 A. Yes.

03:56:54 13 Q. On the 9th and 10th of October 2017, right?

03:56:58 14 A. Yes.

03:56:58 15 Q. And two of those files were the ones where you made a
03:57:05 16 mistake about, correct?

03:57:06 17 A. Yes. They are -- they are export controlled.

03:57:12 18 Q. Right. Because they were export controlled --

03:57:14 19 A. Yes.

03:57:15 20 Q. -- correct? Okay. We'll talk about that a little bit
03:57:19 21 more.

03:57:20 22 You arrived in China on October 12, 2017, correct? The
03:57:26 23 day before your presentation?

03:57:27 24 A. Yes.

03:57:28 25 Q. And you met with Mujin and Mr. Xu, right?

03:57:35 1 **A.** Yes.

03:57:35 2 **Q.** And then on the 13th, you gave your presentation,

03:57:40 3 correct?

03:57:41 4 **A.** Yes.

03:57:41 5 **Q.** And you said that that involved the three hosts, so

03:57:47 6 Mr. Xu and Mujin and this secretary, correct?

03:57:49 7 **A.** Yes.

03:57:49 8 **Q.** And then also three engineers, right?

03:57:51 9 **A.** Yes.

03:57:51 10 **Q.** And during that talk, you offered your expertise, right?

03:58:01 11 **A.** Yes.

03:58:02 12 **Q.** Now, Mr. Gau, would you agree with me that your expertise

03:58:08 13 is built up over your entire career?

03:58:11 14 **A.** Yes.

03:58:12 15 **Q.** It starts with your education, right?

03:58:14 16 **A.** Yes.

03:58:15 17 **Q.** And then it goes to the things that you learn while

03:58:18 18 you're working, right?

03:58:19 19 **A.** Yes.

03:58:20 20 **Q.** And things that you learn at seminars or trainings,

03:58:23 21 right?

03:58:23 22 **A.** Yes.

03:58:24 23 **Q.** All the way up to the present, correct?

03:58:27 24 **A.** Yes.

03:58:27 25 **Q.** Your employer does not own your expertise, correct?

03:58:37 1 **A.** Sorry. I did not catch that question exactly.

03:58:40 2 **Q.** Your employer does not own your expertise. That's yours,

03:58:46 3 right?

03:58:47 4 **A.** No.

03:58:52 5 **Q.** Now, during this talk that you gave, you talked about

03:59:01 6 various topics, correct?

03:59:03 7 **A.** Yes.

03:59:05 8 **Q.** You did not talk about all of the topics that you had

03:59:11 9 sent materials over, correct?

03:59:12 10 **A.** Yes, that's correct.

03:59:14 11 **Q.** For example, you sent over materials concerning the

03:59:20 12 auxiliary power unit, correct?

03:59:22 13 **A.** Yes.

03:59:22 14 **Q.** APU?

03:59:23 15 **A.** Right.

03:59:24 16 **Q.** You didn't talk about that, correct?

03:59:25 17 **A.** No.

03:59:26 18 **Q.** Okay.

03:59:28 19 **A.** But it's in the email.

03:59:31 20 **Q.** Right. So when you said that during that talk you

03:59:42 21 provided your expertise -- providing your expertise, there's

03:59:46 22 nothing wrong with that, right?

03:59:48 23 MR. MANGAN: Objection.

03:59:51 24 THE COURT: Sustained as to --

03:59:53 25 THE WITNESS: I don't --

GAU - CROSS (Miedel)

141

03:59:54 1 THE COURT: Excuse me. Excuse me. Sustained as to

03:59:56 2 form.

03:59:57 3 BY MR. MIEDEL:

03:59:58 4 Q. Mr. Gau, it's not illegal, it's not unlawful to provide

04:00:03 5 or offer your expertise to fellow engineers, correct?

04:00:07 6 MR. MANGAN: Objection.

04:00:08 7 THE COURT: Objection's sustained.

04:00:10 8 THE WITNESS: This is not --

04:00:12 9 THE COURT: Excuse me.

04:00:13 10 THE WITNESS: Not --

04:00:14 11 THE COURT: Excuse me, please. The objection is

04:00:16 12 sustained. He's not a lawyer. You are asking him for a legal

04:00:21 13 conclusion.

04:00:24 14 BY MR. MIEDEL:

04:00:24 15 Q. In your -- well, you were asked on direct examination by

04:00:28 16 the government about being trained or informed by Honeywell

04:00:37 17 about certain things that you could not share, correct?

04:00:40 18 A. That's right. That's security code training.

04:00:44 19 Q. Right.

04:00:45 20 A. Every year, could not talk to foreigner.

04:00:50 21 Q. My question is simply yes or no, right, were you --

04:00:55 22 A. Okay, sorry.

04:00:56 23 Q. -- did you receive training from Honeywell on what you

04:00:59 24 could or could not share?

04:01:00 25 A. Can you repeat it same question again? Sorry.

GAU - CROSS (Miedel)

142

04:01:04 1 Q. Yes, sir.

04:01:06 2 A. A little bit slower. I appreciate that. Thank you.

04:01:10 3 Q. No problem, Mr. Gau.

04:01:12 4 You received training from Honeywell about what topics

04:01:22 5 you could or what materials you could share and which ones you

04:01:28 6 could not share, right?

04:01:29 7 A. Yes.

04:01:30 8 Q. Okay. But Honeywell does not have -- in your opinion,

04:01:40 9 Honeywell does not have the right to keep you from sharing

04:01:42 10 your expertise, right?

04:01:45 11 MR. MANGAN: Objection.

04:01:46 12 THE COURT: Sustained.

04:01:51 13 He's going to ask another question.

04:01:53 14 BY MR. MIEDEL:

04:01:53 15 Q. I am going to ask you another question.

04:01:55 16 A. Okay.

04:01:55 17 THE COURT: And perhaps move along.

04:01:57 18 BY MR. MIEDEL:

04:01:57 19 Q. During that talk in October of 2017, you were not asked

04:02:05 20 specific questions about your -- about Honeywell, right?

04:02:10 21 A. No.

04:02:12 22 Q. Okay. Now, after you left China in October of 2017 and

04:02:26 23 you were back in the United States, you continued to

04:02:31 24 correspond with Mujin on WeChat, right?

04:02:34 25 A. Yes.

GAU - CROSS (Miedel)

143

04:02:36 1 **Q.** Okay. And, again, those conversations were pleasantries,
04:02:41 2 right?
04:02:42 3 **A.** Yes.
04:02:43 4 **Q.** They were not work related?
04:02:44 5 **A.** No.
04:02:45 6 **Q.** Okay. And then on January 7th of 2018, she sent you this
04:02:53 7 document with these engineering questions, right?
04:02:55 8 **A.** Yes.
04:02:56 9 **Q.** And we saw that earlier today, correct?
04:02:59 10 **A.** Yes.
04:02:59 11 **Q.** And those questions are engineering problems, right?
04:03:08 12 They are problems that they wanted your help with figuring
04:03:11 13 out?
04:03:11 14 **A.** Yes.
04:03:12 15 **Q.** Okay. Those questions do not mention Honeywell at all,
04:03:15 16 do they?
04:03:16 17 **A.** No.
04:03:21 18 **Q.** Okay. All right. I'm going to move on to something
04:03:38 19 different.
04:03:41 20 You testified that you -- that you pled guilty to a
04:03:48 21 crime, right?
04:03:48 22 **A.** Yes.
04:03:49 23 **Q.** Okay. And that crime was evading export restrictions,
04:03:54 24 right?
04:03:55 25 **A.** Yes.

04:03:55 1 **Q.** And that related to the two files that you had emailed to

04:04:02 2 Mujin, right?

04:04:03 3 **A.** Yes.

04:04:03 4 **Q.** Two out of the seven?

04:04:05 5 **A.** Yes.

04:04:05 6 **Q.** Okay. And those two slides concerned auxiliary power

04:04:12 7 units, right?

04:04:12 8 **A.** Yes.

04:04:13 9 **Q.** Which you, in fact, didn't even talk about in China,

04:04:16 10 right?

04:04:16 11 **A.** Not in a presentation.

04:04:18 12 **Q.** Yes. And do you understand that to be export controlled,

04:04:25 13 it means that this APU or auxiliary power unit technology is

04:04:35 14 on a list of topics or materials that cannot be exported to

04:04:38 15 another country without a license, right?

04:04:40 16 **A.** Yes.

04:04:40 17 **Q.** Okay. And you didn't have a license?

04:04:42 18 **A.** I don't have license.

04:04:44 19 **Q.** Right. So the crime is not that you shared it but that

04:04:49 20 you didn't have a license to share it, right?

04:04:51 21 **A.** That's right, I did not have license.

04:04:55 22 **Q.** Now, I think you testified about this on direct already,

04:05:00 23 but export controlled material is different in your

04:05:06 24 understanding from trade secrets, right?

04:05:08 25 **A.** It's different from --

04:05:10 1 **Q.** Trade secrets.

04:05:12 2 **A.** I don't understand the difference.

04:05:15 3 **Q.** Okay.

04:05:15 4 **A.** I think they are the same.

04:05:17 5 **Q.** Well, what you said on direct was there -- I think you

04:05:20 6 said there is three sort of classifications, right?

04:05:22 7 **A.** Right.

04:05:23 8 **Q.** You called it classified material, right? Do you

04:05:26 9 remember that?

04:05:27 10 **A.** Yes.

04:05:27 11 **Q.** And that's material that you're not allowed to share with

04:05:30 12 anyone, period, right?

04:05:32 13 **A.** Right, right.

04:05:33 14 **Q.** Okay. And then there is a second category --

04:05:35 15 **A.** Yes.

04:05:35 16 **Q.** -- which you can share with somebody -- with certain

04:05:39 17 people, right?

04:05:39 18 **A.** Yeah. You have to approve the second.

04:05:42 19 **Q.** And for that second material, if you have a license to do

04:05:45 20 it, you can share it, right?

04:05:47 21 **A.** Yes.

04:05:48 22 **Q.** Okay. So the first category you cannot share, period.

04:05:51 23 **A.** Yes.

04:05:52 24 **Q.** The second, the material you can share if you have a

04:05:55 25 license, right?

04:05:56 1 **A.** Yes.

04:05:56 2 **Q.** Okay. So they are different, right?

04:05:59 3 **A.** Yes, there's a different. There's a big different.

04:06:04 4 **Q.** Big difference. Now, no one ever accused you of sharing

04:06:12 5 the classified material -- right? -- the secrets, the trade

04:06:16 6 secrets?

04:06:16 7 **A.** Oh, no, no.

04:06:17 8 **Q.** No. You were accused of exporting material without a

04:06:22 9 license, right?

04:06:23 10 **A.** Yes.

04:06:23 11 **Q.** And that's what you pled guilty to?

04:06:26 12 **A.** Yes.

04:06:32 13 **Q.** By the way, the two slides that you sent that were export

04:06:46 14 controlled had to do with auxiliary power units, as we said,

04:06:52 15 right?

04:06:52 16 **A.** Yes.

04:06:52 17 **Q.** And those were -- or are they known also as APUs, right?

04:06:58 18 **A.** Yes.

04:06:58 19 **Q.** Okay. And those APUs on those slides actually concerned

04:07:03 20 the APUs of the Gulfstream V aircraft, right?

04:07:08 21 **A.** It is similar application to helicopter S-92.

04:07:15 22 **Q.** Okay. But it's also for the Gulfstream V; isn't that

04:07:20 23 right?

04:07:20 24 **A.** Yes.

04:07:20 25 **Q.** And the Gulfstream V was an aircraft that was designed in

04:07:23 1 the 1990s, right? Are you aware of that?

04:07:26 2 A. I think so. I'm not clear about that.

04:07:29 3 Q. Okay. No problem.

04:07:32 4 Now, you were also aware that Honeywell works with

04:07:37 5 Chinese companies, correct?

04:07:38 6 A. On some of the joint venture.

04:07:43 7 Q. On joint ventures, right? For example, you know about

04:07:47 8 the COMAC aircraft C919. Do you know that?

04:07:51 9 A. Yes. At different division.

04:07:56 10 Q. Sure. But you're aware of it, right?

04:07:58 11 A. Yes.

04:08:00 12 Q. And the C919 is an aircraft or airliner that's made in

04:08:04 13 China, correct?

04:08:06 14 THE COURT: Excuse me.

04:08:08 15 MR. MANGAN: Objection.

04:08:08 16 THE COURT: We will pause for a moment. Objection.

04:08:10 17 MR. MANGAN: Scope, Your Honor.

04:08:11 18 THE COURT: Sustained.

04:08:18 19 MR. MIEDEL: One moment.

04:08:19 20 THE COURT: Very well.

04:08:35 21 BY MR. MIEDEL:

04:08:40 22 Q. You told us you met with the FBI a number of times,

04:08:43 23 right?

04:08:43 24 A. Yes.

04:08:44 25 Q. Okay. And you -- they asked you a lot of questions about

04:08:50 1 the things that you've talked about today, right?

04:08:52 2 **A.** Yes.

04:08:53 3 **Q.** And do you remember telling them about a colleague named

04:09:02 4 Ho Kuo-San?

04:09:03 5 **A.** Sorry. I did not catch that.

04:09:05 6 **Q.** Do you remember telling them about a former colleague at

04:09:08 7 Honeywell named Ho Kua-San?

04:09:13 8 **A.** Could you say that again? Sorry. I apologize.

04:09:17 9 **Q.** No problem.

04:09:18 10 **A.** Your exact word.

04:09:21 11 **Q.** The name of the colleague is Ho, H-O?

04:09:23 12 **A.** H-O.

04:09:24 13 **Q.** Kuo-San, K-U-O --

04:09:27 14 **A.** Oh, yes.

04:09:27 15 **Q.** Do you remember telling them about him?

04:09:30 16 **A.** In the investigation, yes.

04:09:31 17 **Q.** Yes. And that person was another engineer at Honeywell,

04:09:36 18 right?

04:09:36 19 **A.** Yes.

04:09:37 20 **Q.** Okay. And when you were in China in 2017, you told

04:09:46 21 Mr. Xu about Ho Kuo-San. Do you remember that?

04:09:49 22 **A.** Recommend the -- right.

04:09:57 23 **Q.** You recommended him to him?

04:09:58 24 **A.** Yeah, I mention about the name.

04:10:00 25 **Q.** Right.

04:10:00 1 **A.** Actually not recommending. I mention the name, yes.

04:10:03 2 **Q.** You mentioned the name. And you told him that he was

04:10:06 3 another engineer at Honeywell, right?

04:10:08 4 **A.** Right.

04:10:09 5 **Q.** Okay. And Mr. Xu showed no interest in talking to him,

04:10:13 6 correct?

04:10:13 7 **A.** No, no contact.

04:10:16 8 **Q.** Okay. I just have a few more questions, Mr. Gau.

04:10:21 9 So just to briefly recap. You met Mr. Xu for the first

04:10:34 10 time in Beijing in 2016, right?

04:10:36 11 **A.** Yes.

04:10:37 12 **Q.** Okay. And he did not ask you for any technical or trade

04:10:42 13 secret information, right?

04:10:43 14 **A.** No. He is very quiet.

04:10:46 15 **Q.** Right. And then in November of 2016, he asked you to

04:10:54 16 send material, and he said it could be any material. You

04:10:57 17 remember that, right?

04:10:58 18 **A.** Yes, I remember that.

04:10:59 19 **Q.** Okay. And then at 2017, we just discussed the four

04:11:04 20 topics of the presentation, and those were very general topics

04:11:08 21 too, correct?

04:11:09 22 **A.** There's the T700.

04:11:13 23 **Q.** Yeah, but there were --

04:11:15 24 **A.** Four topic.

04:11:16 25 **Q.** Four general topics, correct?

04:11:18 1 **A.** Yes.

04:11:18 2 **Q.** You said that. And as you just testified during the

04:11:24 3 presentation, nobody asked you anything about Honeywell,

04:11:27 4 right?

04:11:27 5 **A.** No.

04:11:29 6 **Q.** Right. And then the list of things that Mujin emailed or

04:11:37 7 WeChat'ed you in early 2018 also did not ask you anything

04:11:43 8 about Honeywell, right?

04:11:44 9 **A.** No.

04:11:45 10 **Q.** Right. So, Mr. Gau, in all the interactions you've had

04:11:55 11 with Zha Rong, Mr. Xu, Mujin, during that entire time,

04:12:04 12 literally no one ever asked you to reveal trade secrets; isn't

04:12:08 13 that right?

04:12:09 14 **A.** No. I remember no, no -- no technical question to me.

04:12:22 15 MR. MIEDEL: Thank you very much.

04:12:23 16 THE WITNESS: Thank you.

04:12:24 17 THE COURT: Have you finished your cross?

04:12:26 18 MR. MIEDEL: Yes. I'm done. Thank you.

04:12:30 19 THE COURT: Very well. Redirect.

04:12:32 20 The government lawyer gets to ask additional questions.

04:12:37 21 MR. MANGAN: I didn't hear that, Your Honor. I'm

04:12:39 22 sorry.

04:12:39 23 THE COURT: The government gets to ask additional

04:12:42 24 questions.

04:12:43 25 **REDIRECT EXAMINATION**

GAU - REDIRECT (Mangan)

151

04:12:44 1 BY MR. MANGAN:

04:12:47 2 **Q.** Mr. Gau?

04:12:50 3 **A.** Yes, I'm here.

04:12:51 4 **Q.** Thank you. First of all, regarding the WeChats, we saw

04:12:58 5 the WeChats that you had with someone named YouJun. Do you

04:13:03 6 remember that?

04:13:03 7 **A.** Yes.

04:13:03 8 **Q.** When you went to China in 2017, did you talk with Mr. Xu

04:13:08 9 about that WeChat handle?

04:13:11 10 **A.** Yes, I ask him question, is this your handle. The icon

04:13:19 11 on my cell phone is called YouJun, Y-U-J-A-N [sic].

04:13:29 12 **Q.** And what did he say?

04:13:30 13 **A.** He said yes, that's his handle.

04:13:35 14 **Q.** So he said that was him that was chatting with you?

04:13:39 15 **A.** I was not sure. There's a switching point. I am not

04:13:47 16 aware of when that happened. But I ask him -- after I ask

04:13:53 17 him, then I realize there's a switching point in between.

04:13:59 18 **Q.** Okay. The meeting you had in October 2017, that was not

04:14:05 19 with any students, was it?

04:14:07 20 **A.** That's Mr. X-U I think I met, yeah.

04:14:18 21 **Q.** Mr. Gau, the meeting you had in October 2017, do you

04:14:23 22 remember it?

04:14:24 23 **A.** I met him, yes.

04:14:27 24 **Q.** Do you remember the meeting you had in China in October

04:14:32 25 2017?

04:14:36 1 **A.** Yes.

04:14:36 2 **Q.** In a hotel room in Nanjing?

04:14:39 3 **A.** Oh, yes, I remember.

04:14:40 4 **Q.** Were you presenting to students at that time?

04:14:44 5 **A.** What's your question? Sorry. I did not hear. Is it

04:14:52 6 preventing?

04:14:53 7 **Q.** I believe you testified before that you -- when you met

04:14:57 8 with them, you only met with Mr. Xu, Mr. Cai, Mujin, and three

04:15:05 9 engineers; is that right?

04:15:07 10 **A.** Yes.

04:15:08 11 **Q.** There were no university students, correct?

04:15:11 12 **A.** No, no student. I initially expect some student, but

04:15:21 13 initially, no. Only three engineers.

04:15:23 14 **Q.** You thought it was going to be students --

04:15:25 15 **A.** Yeah, I thought.

04:15:25 16 **Q.** -- but it wasn't?

04:15:26 17 **A.** But no student.

04:15:32 18 **Q.** And they did ask you to send materials, correct?

04:15:34 19 **A.** You mean send the material?

04:15:41 20 **Q.** Didn't they ask you to send the materials to them?

04:15:44 21 **A.** Oh, yes.

04:15:46 22 **Q.** And they gave you the topics, correct?

04:15:49 23 **A.** Yes.

04:15:51 24 **Q.** And they provided you payment for that, correct?

04:15:53 25 **A.** Yes.

04:15:56 1 Q. And this is while you worked for Honeywell?

04:15:59 2 A. Yes, I working for Honeywell, yes.

04:16:03 3 MR. MIEDEL: Objection. Leading.

04:16:04 4 THE COURT: Don't lead the witness. Please proceed.

04:16:07 5 BY MR. MANGAN:

04:16:07 6 Q. Where were you working during that time?

04:16:09 7 A. What year?

04:16:14 8 Q. In 2017.

04:16:15 9 A. Honeywell. I work at Honeywell.

04:16:18 10 Q. And in your conversations with Mr. Xu, did he know that

04:16:23 11 you worked at Honeywell?

04:16:24 12 A. Yes, I think so.

04:16:27 13 Q. All right. And for all these meetings that we talked

04:16:32 14 about in 2017, in 2016, did you tell Honeywell what you were

04:16:38 15 doing?

04:16:42 16 MR. MIEDEL: Objection. Asked and answered.

04:16:43 17 THE COURT: He can answer it again.

04:16:46 18 THE WITNESS: No. I told them I working Honeywell

04:16:51 19 in a different field, not propulsion anymore.

04:16:55 20 BY MR. MANGAN:

04:16:55 21 Q. Sorry. I meant did you tell Honeywell --

04:16:58 22 A. Yes.

04:16:59 23 Q. -- that you were meeting with Mr. Xu --

04:17:01 24 A. Oh, no, no.

04:17:02 25 Q. -- in China?

04:17:02 1 A. No, I did not tell Honeywell. For 2016 and 2017 trips,

04:17:09 2 I did not tell Honeywell.

04:17:14 3 Q. After you returned from the October 2017 meeting, you

04:17:22 4 received a list of technical requests?

04:17:26 5 A. Yes.

04:17:27 6 Q. And was that from Mujin?

04:17:29 7 A. Yes.

04:17:30 8 Q. And did you provide this work?

04:17:35 9 A. No, no work provide.

04:17:39 10 Q. Is it possible that if you had done this work it might

04:17:44 11 have asked for Honeywell information?

04:17:47 12 MR. MIEDEL: Objection.

04:17:48 13 THE COURT: Sustained as to form.

04:17:48 14 THE WITNESS: I --

04:17:54 15 THE COURT: He's going to ask another question.

04:17:57 16 BY MR. MANGAN:

04:17:57 17 Q. I'll ask a new question, okay?

04:17:59 18 Did these topics touch on or relate to some of your work

04:18:04 19 at Honeywell?

04:18:05 20 A. No, it's not -- it's not related to my work at

04:18:15 21 Honeywell at all because I'm off that propulsion field

04:18:23 22 already for 20 years.

04:18:25 23 Q. But did --

04:18:27 24 A. But in 1997 -- 1996 through 1998, I work at Sky Harbor

04:18:40 25 division, AlliedSignal at that time. There was propulsion.

04:20:26 1 THE COURT: All right. I'll see you at sidebar.

04:20:28 2 It's been a while.

04:26:44 3 (At sidebar.)

04:26:44 4 MR. MANGAN: This was the exhibit that we previously

04:26:44 5 discussed regarding a 2003 tasking from Zha Rong. And they

04:26:44 6 objected because of the time period, as well as some other

04:26:44 7 reasons.

04:26:44 8 Then on cross, they asked a ton of questions about during

04:26:44 9 these trips they never asked you for trade secrets. They

04:26:45 10 never asked you for this. This is him sending a letter asking

04:26:45 11 for it.

04:26:45 12 And then, secondly, Your Honor, we want to point out we

04:26:45 13 had asked for this -- the curative instruction we asked for

04:26:45 14 regarding trade secrets we believe is becoming more and more

04:26:45 15 of a problem with the line of questioning that they are posing

04:26:46 16 about nobody asking for the word "trade secrets." We believe

04:26:46 17 it's -- the cumulative effect is that it's becoming

04:26:46 18 misleading. But, anyway, I wanted to revisit that question.

04:26:46 19 MR. MIEDEL: Your Honor, I was very careful not to

04:26:46 20 open the door on my questions because my questions were did

04:26:46 21 anyone ask you to reveal trade secrets. The government cannot

04:26:46 22 argue that this requests or asks for any trade secrets because

04:26:46 23 it doesn't. And so I didn't ask did they ask you for any

04:26:46 24 technical information, did they ask you for any engineering

04:26:46 25 problems. Didn't ask any of those things. I asked

04:26:46 1 specifically did they ask for trade secrets, and the answer to
04:26:47 2 that is no. And this -- even with this in the answer would
04:26:47 3 still be no.

04:26:47 4 THE COURT: All right. Last word from the
04:26:47 5 government. If you wish to be heard. I think I've ruled on
04:26:47 6 this, and it's not to be used. I'll talk to my law clerk.

04:26:47 7 THE CLERK: I just have a question. Are any of
04:26:47 8 these trade secrets? These listed items?

04:26:47 9 MR. MANGAN: The point we are trying to make, and we
04:26:47 10 feel it's being blurred by the line of questioning, is that
04:26:47 11 they continually ask for technical information. They are not
04:26:47 12 going to use the word "trade secret." And so we wanted to at
04:26:48 13 least present that they keep asking for technical information
04:26:48 14 from him.

04:26:48 15 I believe the last -- I may be misremembering it -- but
04:26:48 16 he asked about trade secrets, at any time did they ever ask
04:26:48 17 for trade secrets. And he said they didn't ask for technical
04:26:48 18 information, even though he's already testified they had.

04:26:48 19 THE COURT: I am not going -- I'm not -- I'll go
04:26:48 20 talk to my law clerk if you give me some space. Would you
04:26:48 21 step back so I can speak with my law clerk.

04:26:48 22 (Pause.)

04:26:48 23 THE COURT: I've ruled on this specific document. I
04:26:48 24 think it's too -- I think it's irrelevant because it's in
04:26:49 25 2003.

04:26:49 1 You are welcome to ask him, they asked you whether
04:26:49 2 anybody asked you for trade secrets. Did they ask you for
04:26:49 3 highly technical information. You can leave it at that.
04:26:49 4 I'll give a curative instruction tomorrow on the trade
04:26:49 5 secret. Understood?
04:26:49 6 MR. MANGAN: Understood.
04:26:49 7 THE COURT: Anything?
04:26:49 8 MR. MIEDEL: Well, Judge, as you can tell, I spent
04:26:49 9 almost all of my process about did we ask for trade secrets,
04:26:49 10 right?
04:26:49 11 THE COURT: Um-hmm.
04:26:49 12 MR. MIEDEL: That's the definition of the crime, not
04:26:49 13 did you send --
04:26:49 14 THE COURT: What are you trying to get me to do at
04:26:49 15 this moment?
04:26:49 16 MR. MIEDEL: No. I am trying to suggest that a
04:26:49 17 curative instruction is unnecessary because there is nothing
04:26:50 18 confusing about that. The jury does have to find --
04:26:50 19 THE COURT: I am going to give a curative
04:26:50 20 instruction unless I get something from you that knocks me off
04:26:50 21 it. Let's get these guys out of here.
04:26:50 22 (In open court.)
04:26:50 23 THE COURT: I have resolved things, and you are
04:26:50 24 going to proceed.
04:26:50 25 You may continue with your questioning, sir, pursuant to

04:26:51 1 the sidebar.

04:26:53 2 BY MR. MANGAN:

04:26:53 3 Q. Mr. Gau, in your visits to China in 2016 and 2017, did

04:27:02 4 Mr. Xu and others continue to invite you back?

04:27:05 5 A. Yes.

04:27:06 6 Q. All right. And like the list from Ms. Mujin, did they

04:27:12 7 ask for you to provide technical information to them?

04:27:15 8 A. I stop after --

04:27:19 9 Q. But did they ask?

04:27:21 10 A. Could you repeat again?

04:27:24 11 Q. Did Mr. Xu and Ms. Mujin ask you to provide technical

04:27:28 12 information?

04:27:32 13 A. On the WeChat, those six topics after I return from

04:27:37 14 China --

04:27:39 15 Q. All right.

04:27:40 16 A. -- in this 2017 presentation, and that's all I got is

04:27:47 17 the six topics, the listing on the Exhibit 89.

04:27:54 18 Q. All right. And during the October 2017 presentation, did

04:27:59 19 the engineers ask you technical questions?

04:28:02 20 A. Yes. I ask them --

04:28:08 21 Q. Okay.

04:28:09 22 A. -- what they need exactly.

04:28:12 23 Q. Lastly, for any of these trips in 2016 and 2017, did you

04:28:20 24 ever bring your Honeywell computer with you?

04:28:22 25 A. No.

04:28:25 1 MR. MANGAN: No further questions, Your Honor.

04:28:26 2 THE COURT: Very well. It's 4:30. Recross on
04:28:35 3 redirect?

04:28:37 4 MR. MIEDEL: Your Honor, very briefly.

04:28:44 5 **RECROSS-EXAMINATION**

04:28:44 6 BY MR. MIEDEL:

04:28:45 7 Q. Mr. Gau, the prosecutor just asked you -- the prosecutor
04:28:48 8 just asked you whether you were asked about technical
04:28:57 9 information. Remember that?

04:28:58 10 A. Sorry. I do not.

04:28:59 11 Q. Just now when the prosecutor asked you a question, he
04:29:02 12 asked whether you were asked by the Chinese people about
04:29:07 13 technical information. Do you remember that?

04:29:10 14 A. Yes.

04:29:11 15 Q. Okay. In your mind, there is a difference between
04:29:20 16 technical information and revealing trade secrets, right?

04:29:24 17 A. Yes.

04:29:25 18 MR. MANGAN: Objection.

04:29:27 19 BY MR. MIEDEL:

04:29:27 20 Q. Thank you.

04:29:28 21 THE COURT: Overruled.

04:29:31 22 Your testimony is complete, sir. You are free to go.

04:29:35 23 THE WITNESS: Thank you.

04:29:37 24 THE COURT: Au revoir. That's French.

04:29:40 25 THE WITNESS: Thank you.

04:29:41 1 THE COURT: Good-bye.

04:29:43 2 THE WITNESS: I can go?

04:29:44 3 THE COURT: Yes.

04:29:54 4 Okay. Ladies and gentlemen of the jury, it's 4:30.

04:29:57 5 We're going to break for the day. You've been at it. You've

04:30:01 6 been doing hard work. We recognize and appreciate it.

04:30:08 7 When you go home and the like, no discussing the case

04:30:10 8 with anyone, even people you love deeply. No discussion of

04:30:13 9 the case with anybody. No independent research. Continue to

04:30:18 10 keep an open mind. I need you in the courthouse at 9:15 in

04:30:23 11 the event we can get you to the courtroom at 9:30.

04:30:26 12 Out of respect for you, we'll rise as you leave.

04:30:30 13 THE COURTROOM DEPUTY: All rise for the jury.

04:30:32 14 (Jury out at 4:30 p.m.)

04:31:01 15 THE COURT: The jury's left the room. The door's

04:31:11 16 closed. You may be seated. Give me just a moment.

04:31:56 17 We are prepared to recess for the day unless there's

04:31:59 18 something that requires my attention before we recess. The

04:32:02 19 jury's left the room.

04:32:04 20 Does the government have anything at this point?

04:32:06 21 MR. MANGAN: No, Your Honor.

04:32:07 22 THE COURT: The defense?

04:32:08 23 MR. MIEDEL: No, Your Honor.

04:32:09 24 THE COURT: We're in recess. Enjoy your evening.

04:32:12 25 THE COURTROOM DEPUTY: All rise. The court is now

04:32:14 1 in recess.

04:32:17 2 (Proceedings adjourned at 4:32 p.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER
23 I, Mary A. Schweinhagen, Federal Official Realtime
4 Court Reporter, in and for the United States District Court
5 for the Southern District of Ohio, do hereby certify that
6 pursuant to Section 753, Title 28, United States Code that the
7 foregoing is a true and correct transcript of the
8 stenographically reported proceedings held in the
9 above-entitled matter and that the transcript page format is
10 in conformance with the regulations of the Judicial Conference
11 of the United States.

12

13 s/Mary A. Schweinhagen

14

21st of January, 2022

15

MARY A. SCHWEINHAGEN, RDR, CRR
FEDERAL OFFICIAL COURT REPORTER

16

17

18

19

20

21

22

23

24

25